

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1925

No. 5

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

SOUTHERN PACIFIC COMPANY, CENTRAL PACIFIC
RAILWAY COMPANY, UNION TRUST COMPANY OF
NEW YORK, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF UTAH.

VOLUME V.

FILED JULY 29, 1927

(26050)

In Equity, No. 420

In the District Court of the United States,
District of Utah.

UNITED STATES OF AMERICA, PETITIONER.

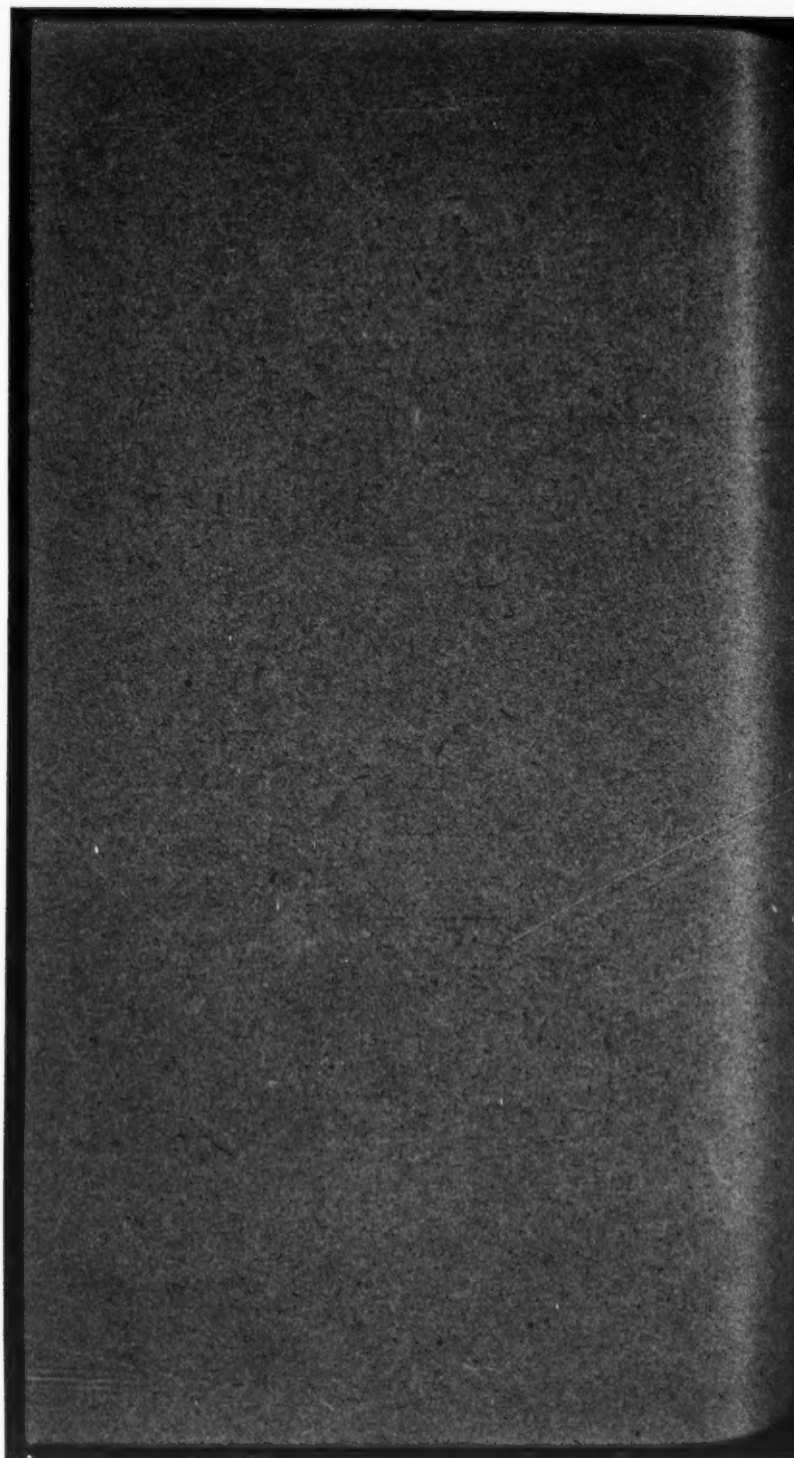
SOUTHERN PACIFIC COMPANY, CENTRAL PACIFIC
RAILWAY COMPANY ET AL., DEFENDANTS.

RECORD—VOLUME 8.

DEFENDANTS' EXHIBITS.

Pages 1677 to 1686, inclusive.

WASHINGTON : GOVERNMENT PRINTING OFFICE : 1901



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Pages 1677 to 1989, inclusive.

MAPS

TOO

LARGE

FOR

FILMING

DEFENDANTS' EXHIBIT (HOOD) No. 1, MARCH 1, 1915.

Map showing construction of Southern Pacific lines prior to January 1, 1870.

DEFENDANTS' EXHIBIT (HOOD) No. 2, MARCH 1, 1915.

Map showing construction of Southern Pacific lines prior to January 1, 1875.

DEFENDANTS' EXHIBIT (HOOD) No. 3, MARCH 1, 1915.

Map showing construction of Southern Pacific lines prior to January 1, 1880.

DEFENDANTS' EXHIBIT (HOOD) No. 4, MARCH 1, 1915.

Map showing construction of Southern Pacific lines prior to January 1, 1882.

DEFENDANTS' EXHIBIT (HOOD) No. 5, MARCH 1, 1915.

Map showing construction of Southern Pacific lines prior to March 1, 1885.

DEFENDANTS' EXHIBIT (HOOD) No. 6, MARCH 1, 1915.

Map showing construction of Southern Pacific lines prior to July 2, 1890.

DEFENDANTS' EXHIBIT (HOOD) No. 7, MARCH 1, 1915.

Map showing lines operated by Southern Pacific Company west of El Paso, Texas, on July 2, 1890, and subsequently; new construction since July 2, 1890, and lines acquired since July 2, 1890.

(The foregoing maps, Defendants' Exhibits Nos. 1 to 7, are not reproduced for distribution as exhibits.)

DEFENDANTS' EXHIBIT (REDINGTON) No. 8, MARCH 3, 1915.

A. N. Towne, general superintendent. E. C. Fellows, asst. genl. superintendent. Central Pacific Railroad. P. O. lock box, 2328.

Central Pacific Railroad	1, 214
Southern Pacific R. R. (south of Goshen)	552
Southern Pacific R. R. of Arizona	182
Los Angeles & San Diego R. R.	28
California Pacific Railroad	140

Northern Railway	113
San Pablo & Tulare R. R.	47
Stockton & Copperopolis R. R.	49
Amador Branch Railroad	27
Los Angeles & Independence R. R.	17
Berkeley Branch Railroad	3
Steamer lines, Sacramento River	294
Steamer lines, Colorado River	363

Miles..... 3,031
8-12-79.

4

GENERAL SUPERINTENDENT'S OFFICE,
San Francisco, Aug. 15, 1879.

Mr. J. A. Fillmore is hereby appointed master of transportation of the Central Pacific R. R. and leased lines, with headquarters at San Francisco.

Mr. R. H. Pratt, superintendent of the Salt Lake division, will succeed Mr. Fillmore as superintendent of the Sacramento and Oregon and the California Pacific and northern divisions, with headquarters at Sacramento.

Mr. A. G. Fell will succeed Mr. Pratt as superintendent of the Salt Lake division, with headquarters at Ogden.

Appointments to take effect August 20th, 1879.

A. N. TOWNE,
General Superintendent.

5 DEFENDANTS' EXHIBIT (REDINGTON) No. 9, MARCH 3,
1915.

CENTRAL PACIFIC RAILROAD AND LEASED LINES,
GENERAL SUPERINTENDENT'S OFFICE,
San Francisco, Cal., April 27, 1881.

Circular.

Mr. W. G. Curtis is hereby appointed superintendent of track for the Central Pacific Railroad and leased lines, with headquarters at San Francisco.

Mr. A. A. Bean will succeed Mr. Curtis as assistant superintendent of the Southern Pacific R. R. of Arizona and the Southern Pacific R. R. of New Mexico, with headquarters at Tucson.

Appointments to take effect the second proximo.

All orders given by these gentlemen pertaining to the duties of their offices will be respected accordingly.

A. N. TOWNE, *Gen'l Superintendent.*

6 DEFENDANTS' EXHIBIT (REDINGTON) No. 10, MARCH 3,
1915.

CENTRAL PACIFIC RAILROAD AND LEASED LINES,
GENERAL SUPERINTENDENT'S OFFICE,
San Francisco, October 8th, 1881.

Circular.

Mr. James Campbell is this day appointed asst. supt. of the Rio Grande division, Southern Pacific R. R. of N. M., also the El Paso division of the Galveston, Harrisburg and San Antonio R. R. with headquarters at El Paso, Texas. All orders given by him pertaining to the duties of his office will be respected.

A. N. TOWNE, *Genl. Supt.*

7 DEFENDANTS' EXHIBIT (REDINGTON) No. 11, MARCH 3, 1915.

CENTRAL PACIFIC RAILROAD COMPANY,
GENERAL SUPT'S OFFICE,
San Francisco, Jany. 12th, 1882.

On Monday next, January 16th, the G., H. & S. A. Ry. (El Paso division) will be opened for business to Marfa, 103.4 miles east of Sierra Blanca. Stations, distances, and agencies east of Sierra Blanca will be as follows:

Sierra Blanca, 18.3, agent. Torbert, 18.1. Haskell, 15.6. Chispa, 16. Valentine, 15.8. Ryan, 19.6, agent. Marfa, J. A. Fillmore.

8 DEFENDANTS' EXHIBIT (REDINGTON) No. 12, MARCH 3, 1915.

Central Pacific Railroad Company. General superintendent's office. A. N. Towne, general superintendent. J. A. Fillmore, ass't gen'l superintendent. E. M. Railton, master of transportation. P. O. lock box 2328.

Central Pacific Railroad.....	1,214
Southern Pacific R. R. (s. of Goshen).....	552
Southern Pacific R. R. of Arizona.....	384
Southern Pacific R. R. of New Mexico.....	171
Galveston, Harrisburg & San Antonio R. R.....	54
Los Angeles & San Diego R. R.....	28
California Pacific Railroad.....	116
Northern Railway.....	118
San Pablo & Tulare R. R.....	47
Stockton & Copperopolis R. R.....	49
Amador Branch Railroad.....	27
Los Angeles & Independence R. R.....	17

	Berkeley Branch Railroad.....	3
9	Steamer lines, Sacramento River.....	294
	Steamer lines, Colorado River.....	365
	Miles.....	3,430

11-18-81.

SAN FRANCISCO, *March 6, 1882.*

Circular.

Six new stations—Araby, Wilmot, Grayton, Dalberg, Wendell, and Aragon—have been established in Arizona and Texas. Locations are as follows:

Yuma, 5.7. Araby, 8.1 (no agent). Gila City, ———. Tucson, 6.7. Wilmot, 7.9 (no agent). Papago, ———. Torbert, 9.1. Dalberg, 9.0 (no agent). Haskell, 15.6. Chispa, 8.0. Wendell, 10 8.0 (no agent). Valentine, 15.8. Ryan, 10.1. Sierra Blanca, 9.9. Grayton, 9.1 (no agent). Aragon, 9.5 (no agent). Marfa.

J. A. FILLMORE, *Asst. Genl. Supt.*

11 DEFENDANTS' EXHIBIT (REDINGTON) No. 13, MARCH 3, 1915.

A. N. Towne, general superintendent. J. A. Fillmore, ass't gen'l superintendent. E. M. Railton, master of transportation. P. O. lock box 2328. Central Pacific Railroad Company, general superintendent's office.

	Central Pacific Railroad.....	1,214
	Southern Pacific R. R. (s. of Goshen).....	552
	Southern Pacific R. R. of Arizona.....	384
	Southern Pacific R. R. of New Mexico.....	171
	Galveston, Harrisburg & San Antonio R. R.....	54
	Los Angeles & San Diego R. R.....	28
	California Pacific Railroad.....	116
	Northern Railway.....	118
	San Pablo & Tulare R. R.....	47
	Stockton & Copperopolis R. R.....	49
	Amador Branch Railroad.....	27
	Los Angeles & Independence R. R.....	17
	Berkeley Branch Railroad.....	3
12	Steamer lines, Sacramento River.....	294
	Steamer lines, Colorado River.....	365
	Miles.....	3,430

11-18-81

SAN FRANCISCO, *April 1st, 1882.*

Circular.

On Saturday, April 8th, 1882, the G., H. and S. A. R. R. will be opened for business to Haymond, 74-4/10 miles east of Marfa. An agency will be opened at Haymond. Marfa agency will be closed. Other stations named will have no agents.

Stations and distances are as follows:

Marfa, 13.8. Paisano, 7.8. Toronto, 5.5. Osman, 5.5. Strobel, 10.2. Altuda, 7.0. Lenox, 8.9. Marathon, 8.6. Warwick, 7.1. Haymond.

J. A. FILLMORE, *Asst. Genl. Supt.*

13 DEFENDANTS' EXHIBIT (REDINGTON) No. 14, MARCH 3, 1915.

OFFICE OF THE PRESIDENT CENTRAL PACIFIC RAILROAD,

San Francisco, Cal., May 3, 1882.

Mr. A. N. Towne is this day appointed general manager of the Central Pacific Railroad and leased lines, with headquarters at San Francisco.

Under the direction of the president, he will attend generally to the executive business of the company, having the supervision and direction of all the departments of the company's service, the financial and accounting excepted.

His orders will be obeyed and respected accordingly.

LELAND STANFORD,

President Central Pacific Railroad.

14 DEFENDANTS' EXHIBIT (REDINGTON) No. 15, MARCH 3, 1915.

CENTRAL PACIFIC RAILROAD COMPANY,

GENERAL SUPERINTENDENT'S OFFICE,

San Francisco, May 20th, 1882.

Circular.

On Monday, May 22nd, 1882, the G., H. & S. A. R. R. (El Paso division) will be opened for business to Strobbridge, 314.1 miles east of El Paso. An agency will be opened at Strobbridge. The agency at Haymond will be closed. Other stations named below will have no agents.

Stations and distances are as follows:

Haymond, 6.1. Taber, 6.4. Maxon Springs, 7.5. Rosenfeld, 8.5. Longfellow, 8.0. Emerson, 8.4. Strobbridge.

J. A. FILLMORE, *General Supt.*

15 DEFENDANTS' EXHIBIT (REDINGTON) No. 16, MARCH 3, 1915.

CENTRAL PACIFIC RAILROAD CO. AND LEASED LINES,
GENERAL SUPERINTENDENT'S OFFICE,
San Francisco, July 24, 1882.

Circular.

On Sunday, July 30th, 1882, the Galveston, Harrisburg & San Antonio Ry. (El Paso division) will be opened for business to Lozier, 358.2 miles east of El Paso.

On the same date the name of Osman Station will be changed to Murphysville, and the name of Strobbridge Station will be changed to Sanderson.

Stations, distances, and agencies will be as follows:

Sanderson, 7.3, agent. Irwin, 6.8, no agent. Eldridge, 6.9, no agent. Tryden, 7.0, no agent. Thurston, 7.8, no agent. Watkins, 8.2, no agent. Lozier, agent.

J. A. FILLMORE, *Gen. Supt.*

16 DEFENDANTS' EXHIBIT (REDINGTON) No. 17, MARCH 3, 1915.

CENTRAL PACIFIC RAILROAD COMPANY,
PRESIDENT'S OFFICE,
San Francisco, January 1st, 1883.

Mr. Timothy Hopkins has been elected treasurer of this company, vice E. W. Hopkins, resigned.

CHARLES CROCKER,
Second Vice President.

17 DEFENDANTS' EXHIBIT (REDINGTON) No. 18, MARCH 3, 1915.

CENTRAL PACIFIC RAILROAD CO. AND LEASED LINES,
GENERAL SUPERINTENDENT'S OFFICE,
San Francisco, Aug. 21st, 1884.

Circular.

September 1st the Oregon division of the Central Pacific Railroad will be opened for business to Delta, 38.48 miles north of Redding.

Stations, agencies, and distances will be as follows:

Redding, 2.73 (agent). Middle Creek, 6.97 (agent). Copley, 7.65 (no agent). Kennet, 4.54 (no agent). Morley, 3.65 (no agent). Elmore, 7.28 (no agent). Smithson, 5.66 (no agent). Delta (agent).

J. A. FILLMORE, *Genl. Supt.*

18 DEFENDANTS' EXHIBIT (REDINGTON) No. 19, MARCH 3, 1915.

CENTRAL PACIFIC RAILROAD AND LEASED LINES,
GENERAL SUPERINTENDENT'S OFFICE,
San Francisco, Oct. 5th, 1884.

Circular.

The name of *Vermillionville* station, on the G., H. and S. A. Ry. system, has this day been changed to *La Fayette*.

J. A. FILLMORE, *Genl. Supt.*

19 DEFENDANT'S EXHIBIT (KLINK) No. 20, MARCH 4, 1915.

This agreement, made this 10th day of February, 1885, between the Southern Pacific Company, a corporation duly organized and existing under the laws of the State of Kentucky, and the Southern Pacific Railroad Company, a corporation duly organized and existing under the laws of the United States and the State of California; the Southern Pacific Railroad Company, a corporation duly organized and existing under the laws of the Territory of Arizona; the Southern Pacific Railroad Company, a corporation duly organized and existing under the laws of the Territory of New Mexico; the Galveston, Harrisburg and San Antonio Railway Company, a corporation duly organized and existing under the laws of the State of Texas; the Texas and New Orleans Railroad Company of 1874, a corporation duly organized and existing under the laws of the State of Texas; the Louisiana Western Railroad Company, a corporation duly organized and existing under the laws of the State of Louisiana; Morgan's Louisiana and Texas Railroad and Steamship Company, a corporation duly organized and existing under the laws of the State of Louisiana; and the Mexican International Railroad Company, a corporation duly organized and existing under the laws of the State of Connecticut—

20 Witnesseth, That the said Southern Pacific Railroad Company, organized and existing under the laws of the United States and the State of California, hereby leases to the said Southern Pacific Company for the term of ninety-nine years from the date hereof all of its railroad situated in the State of California, known and designated as the Southern Pacific Railroad of California, with all its branches and all railroads now leased by it, together with the rolling stock, telegraph lines, tools, and property of every kind and nature whatsoever now in use upon or in connection with said railroads, and together with all the appurtenances thereunto belonging, with the right to possess, maintain, use, and operate the said property and to receive the rents, issues, and profits thereof.

II. That the said Southern Pacific Railroad Company, organized and existing under the laws of the Territory of Arizona, hereby leases to the said Southern Pacific Company, for the term of ninety-
21 nine years from the date hereof, all of its railroad situated in the Territory of Arizona, and known and designated as the Southern Pacific Railroad of Arizona, together with all its branches and all the rolling stock, telegraph lines, tools, and property of every kind and nature whatsoever, now in use upon or in connection with said railroad or branches, and together with all the appurtenances thereunto belonging, with the right to possess, maintain, use, and operate the said property, and to receive the rents, issues, and profits thereof.

III. That the said Southern Pacific Railroad Company, organized and existing under the laws of the Territory of New Mexico, hereby leases to the said Southern Pacific Company for the term of ninety-nine years from the date hereof all of its railroad situated in the Territory of New Mexico and known and designated as the Southern Pacific Railroad of New Mexico, together with all its branches and all the rolling stock, telegraph lines, tools, and property of every kind and nature whatsoever now in use upon or in connection with said railroad or its branches, and together with all the appurtenances thereunto belonging, with the right to possess, maintain, use,
22 and operate the said property and to receive the rents, issues, and profits thereof.

IV. That the said Galveston, Harrisburg and San Antonio Railway Company hereby leases to the said Southern Pacific Company for the terms of ninety-nine years from the date hereof all of its railroad situated in the State of Texas and known and designated as the Galveston, Harrisburg and San Antonio Railway, with all its branches and all the rolling stock, telegraph lines, tools, and property of every kind and nature whatsoever now in use upon or in connection with said railroad or its branches, and together with all the appurtenances thereunto belonging, and all other property now owned, held, and possessed by it, with the right to possess, maintain, use, and operate the said property and to receive the rents, issues, and profits thereof.

V. That the said Texas and New Orleans Railroad Company of 1874 hereby leases to the said Southern Pacific Company for the term of ninety-nine years from the date hereof all of its railroad situated in the State of Texas and known and designated as the Texas and New Orleans Railroad of 1874, together with all its
23 branches and all the rolling stock, telegraph lines, tools, and property of every kind and nature whatsoever now in use upon or in connection with said railroad or branches, and together with all the appurtenances thereunto belonging, with the right to

possess, maintain, use, and operate the said property and to receive the rents, issues, and profits thereof.

VI. That the said Louisiana Western Railroad Company hereby leases to the said Southern Pacific Company for the term of ninety-nine years from the date hereof all of its railroad situated in the State of Texas and Louisiana and known and designated as the Louisiana Western Railroad, together with all its branches and all the rolling stock, telegraph lines, tools, and property of every kind and nature whatsoever now in use upon or in connection with said railroad or branches and together with all the appurtenances thereunto belonging, with the right to possess, maintain, use, and operate the said property and to receive the rents, issues, and profits thereof.

VII. That the said Morgan's Louisiana and Texas Railroad and Steamship Company hereby lease to the said Southern Pacific Company for the term of ninety-nine years from the date thereof its railroad situated in the State of Louisiana and known and designated as the Morgan's Louisiana and Texas Railroad, together with all the branches thereof and the rolling stock, telegraph lines, tools, and property of every kind and nature whatsoever now in use upon or in connection with said railroad and branches, and together with all the appurtenances thereunto belonging; also all the steamships, steamboats, tugs, wharves, piers, landings, depots, buildings, and all other property real and personal now owned, held, or possessed by the said Morgan's Louisiana and Texas Railroad and Steamship Company with the right to possess, maintain, use, and operate the said property and to receive the rents, issues, and profits thereof.

VIII. That the said Mexican International Railroad Company hereby leases to the said Southern Pacific Company for the term of ninety-nine years from the date hereof all of its railroad and the branches thereof situated in the Republic of Mexico, known and designated as the Mexican International Railroad, together with all its branches and the rolling stock, telegraph lines, tools, and property of every kind and nature whatsoever now in use upon or in connection with said railroad and together with all the appurtenances thereunto belonging, with the right to possess, maintain, use, and operate the said property and to receive rents, issues, and profits thereof.

In consideration of the leases aforesaid the said Southern Pacific Company agrees to and with the other corporations, parties hereto, that it will keep the said leased property in good order, condition, and repair; operate, maintain, add to, and better the same at its own expense; pay all taxes legally assessed against or levied thereon; and will upon the termination of this lease return the same to the

respective parties from which it was leased or to their successors, with additions and betterments in as good condition and repair as the same was at the date hereof.

That it hereby assumes and will discharge all the liabilities and obligations of every kind of the said railroad companies, and each of them, except the obligations to pay the principal of their indebtedness, known as the bonded indebtedness now outstanding and secured by mortgage or deed of trust, or which may hereafter be incurred by either of said companies under the provisions of
26 any existing mortgage or deed of trust, or any mortgage or deed of trust hereafter, with the consent of this company made. That as to such bonded indebtedness, it will pay off and discharge at maturity the interest upon the same, and will, upon demand of either of said railroad companies, guarantee, in such form as said company may require, the payment of the principal and interest thereof.

That said Southern Pacific Company will annually on the first day of May pay the following named railroad companies as rental a sum equal to ninety-three and one-twelfth ($93\frac{1}{12}$) per cent of its net profits, if any net profits there be, for the year ending on the thirty-first day of December next preceding that date as follows:

To the said Southern Pacific Railroad Company, existing under the laws of the United States and the State of California, twenty-six and one-half ($26\frac{1}{2}$) per cent of said net profits;

To the said Southern Pacific Railroad Company, existing under the laws of the Territory of Arizona, twelve (12) per cent of said net profits;

To the said Southern Pacific Railroad Company, existing under the laws of the Territory of New Mexico, four (4) per cent of said net profits;

27 To the said Galveston, Harrisburg and San Antonio Railway Company sixteen and one-quarter ($16\frac{1}{4}$) per cent of said net profits;

To the said Texas and New Orleans Railroad Company of 1874 seven and one-half ($7\frac{1}{2}$) per cent of said net profits;

To the said Louisiana Western Railroad Company three and one-third ($3\frac{1}{3}$) per cent of said net profits;

To the said Morgan's Louisiana and Texas Railroad and Steamship Company twenty-two and one-half ($22\frac{1}{2}$) per cent of said net profits;

To the said Mexican International Railroad Company one (1) per cent of said net profits;

The term net profits as used herein shall be construed to mean the monies on hand available for dividends after all expenses, payments,

and disbursements of every nature and kind of the said Southern Pacific Company, except for the rental of railroads now or hereafter leased by said company, have been deducted.

In testimony whereof the parties hereto have caused these presents to be signed by their respective presidents and countersigned by their secretaries, and their corporate seals to be hereunto affixed pursuant to orders of their respective boards of directors on the day and year first herein written.

In octuple.

Southern Pac. Co. corporate seal.

W. E. BROWN,
President Southern Pacific Company.

H. C. NASH,
Secretary Southern Pacific Company.

S. P. R. R. Co. corporate seal.

CHARLES CROCKER,
President Southern Pacific Railroad Company.

J. L. WILLCUTT,
Secretary Southern Pacific Railroad Company.

S. P. R. R. Co. corporate seal, Arizona.

CHARLES F. CROCKER,
President Southern Pacific Railroad Company.

F. S. DOUTY,
Secretary Southern Pacific Railroad Company

S. P. R. R. Co. corporate seal, New Mexico.

CHARLES F. CROCKER,
President Southern Pacific Railroad Company of New Mexico.

GEO. E. GRAY,
Secretary Southern Pacific Railroad Company of New Mexico.

29 G., H. & S. A. Ry. Co. corporate seal.

T. W. PIERCE,
President Galveston, Harrisburg & San Antonio Railway Company.

CHAS. BABIDGE,
Asst. Secretary Galveston, Harrisburg & San Antonio Railway Company.

T. & N. O. R. R. Co. corporate seal of 1874.

C. P. HUNTINGTON,
President Texas & New Orleans Railroad Company of 1874.

I. E. GATES,
Secretary Texas & New Orleans Railroad Company of 1874.

L. W. R. R. Co. corporate seal.

C. P. HUNTINGTON,
President Louisiana Western Railroad Company.

I. E. GATES,

Secretary Louisiana Western Railroad Company.

M. L. & T. R. R. & S. S. Co. corporate seal.

A. C. HUTCHINSON,
*President Morgan's Louisiana & Texas
Railroad & Steamship Company.*

JNO. B. RICHARDSON,

*Secretary Morgan's Louisiana & Texas
Railroad & Steamship Company.*

M. I. R. R. Co. corporate seal.

C. P. HUNTINGTON,
President Mexican International Railroad Company.

F. H. DAVIS,

Secretary Mexican International Railroad Company.

30 (Endorsement on cover:) Omnibus lease. S. P. R. R. of
Cal. S. P. R. R. Co. of Arizona. S. P. R. R. Co. of New Mexico.
G., H. & S. A. Ry. Co. T. & N. O. R. R. Co. L. W. R. R. Co. M. L.
& T. R. R. & S. S. Co. Mex. Int. R. R. Co. to the S. P. Co. Dated
Feby. 10, 1885.

31 DEFENDANTS' EXHIBIT (HOPKINS) NO. 21, MARCH 9, 1915.

Settlement with Pierce, 1, 7.

California & Oregon R. R. matters, 3.

Sending S. P. bonds to Cal., 4.

Issuing 20-year bonds for floating debt of C. P., 5.

Have Am. Dev. Co. make transfer to S. D. Co., 6.

Gates & Brown appointed committee, 7.

Order of consideration of affairs, 9.

Leases between S. P. R. R. & C. P. R. R. & Sou. Pac. Co., 10.

Exchange of stock between S. D. Co. & P. I. Co., 11.

General offices of Sou. Pac. Co. in San Francisco, 12, 19.

Sale of property to C. P. R. R. Co. & S. P. R. R. Co., 12.

Meetings to be held every day, 13.

Organization of Southern Pac. Co., 14, 15, 16, 18.

Steel plate certificates of stock, 17.

Seven directors Sou. Pac. Co., 19.

32 Investing in Gal., Har. & San A. bonds, 21.

Central Pacific stock on hand, 22.

Dividing stocks, 24.

Pro rata of S. P. R. R. stock to be paid in, 24.

Branch road of Memphis & N. O. Line, 27.

Bonds of Memphis & N. O. Line, 29, 39.

Equalizing accounts, 30.

Mr. Pierce agrees to sale of bonds, 32.

Petition to board of directors G., H. & S. A., 33.

Meeting of stockholders of Sou. Dev. Co., 36.

Division of assets of S. D. Co., 41.

Mr. Quintard & Mr. McAlpin, 42.

Division of bonds and stocks, 43.

G., H. & S. A. pay its floating debt by bonds, 45.

33 Floating debt of Texas & New Orleans R. R., 46.

Expert be put upon books, 46.

Charge Pier 37 to Morgan Co.

Leasing to Central Pacific to Sou. Pac. Co., 47.

Sale of Wells Fargo & Co. stock, 48.

Division of all stocks, 48.

34

NEW YORK, *August 28, 1884.*

At a meeting of Leland Stanford, C. P. Huntington, Charles Crocker, and Timothy Hopkins, representing Mrs. M. F. S. Hopkins, it was mutually agreed to meet together from day to day for the purpose of discussing and deciding business matters in which all were interested.

W. E. Brown was appointed secretary, and requested to keep minutes of meetings and a record of transactions.

The first business was to formulate a basis of settlement with Thomas W. Pierce, and it was agreed to purchase from Mr. Pierce 5,747 shares of the capital stock of the Galveston, Har. & San Antonio R. R. Co. and 548 shares of the capital stock of the 35 Texas & New Orleans R. R. Co., and to give him credit for the same on the books of the Southern Dev. Co. It was then agreed to make up the interest on all the accounts of the stockholders of the S. D. Co. to August 30th, 1884.

S., H., H. & C. to assume payment of the bills payable of the S. D. Co. & the amount due to the P. I. Co. on the books of the S. D. Co.

Notes of the S. D. Co. payable in one year to be executed in favor of the five stockholders, drawing interest at 6% pr. annum, for the balance due to each. Mr. Pierce places in the hands of the four others, one quarter to each, notes given for his balance, as collateral security for his proportion of indebtedness to them; he also 36 places in their hands his 10,000 shares of capital stock of the S. D. Co. as further collateral security for his indebtedness.

The Secretary was instructed to make up a statement embodying these points of agreement.

Adjourned.

The letters S., H., H., and C. used in these minutes refer to Leland Stanford, C. P. Huntington, Charles Crocker, and Mrs. M. F. S. Hopkins.

S. D. Co. refers to Southern Development Co. P. I. Co. refers to Pacific Improvement Co.

W. E. BROWN, *Secretary.*

NEW YORK, *August 29, 1884.*

Meeting again called.

California & Oregon R. R. matters were discussed and informal suggestions considered.

37 One suggestion that was made that the C. P. R. R. Co. guarantee 6% on 15,000,000 of bonds, 1,800 mile, 2% on 12,000,000 of prefd. stock, 480 mile, equal to \$2,280 pr mile on 500 miles of road.

Oregon and California people to take \$2,500,000 of C. P. 1st mortgage bonds at par, paying the money as the work progresses; we furnish balance necessary to complete it.

It was agreed that \$300,000 more of S. P. of Cal. bonds be sent to C. F. Crocker to add to the \$700,000, already sent, to be used as collateral in place of bonds of S. P. of New Mexico in possession of N. Luning.

Adjourned.

W. E. BROWN, *Secretary.*

38

NEW YORK, *August 30, 1884.*

Meeting again called.

It is agreed that twenty-year bonds be issued at 6% interest, to be used by the C. P. R. R. Co. as far as they can be made available, to take up floating indebtedness of the company and for such other uses as may be thought desirable by action of the board of directors from time to time, the company reserving the right to redeem these bonds on six months' notice at their par value, commencing with the lowest outstanding numbers.

If the market price should be less than par, then the company to advertise and give the bonds to the lowest bidder.

39 The holders of these bonds shall have the right to exchange them for stock of the company, at the market price, but not less than fifty pr cent of their par value. Issue of bonds not to exceed \$10,000,000.

NEW YORK, *Sept. 3d, 1884.*

Meeting again called.

Have American Development Company transfer to Southern Dev. Co. all the bonds and stock of the Mexican International R. R. Co. for constructing and equipping the railroad and telegraph line.

NEW YORK, *Sept. 5th, 1884.*

Meeting again called and a basis of settlement with Mr. T. W.

Pierce, submitted by the secretary as of date, August 30th, 1884,

40 and its terms agreed upon by all the parties interested. The notes of the S. D. Co. were then executed and delivered in accordance with the basis of settlement and agreements made and executed by Mr. Pierce to each of the other four parties.

The secretary was directed to have the proper entries made on the books of the S. D. Co.

Adjourned.

W. E. BROWN, *Secretary.*

NEW YORK, *Sept. 10, 1884.*

Meeting again called.

I. E. Gates and W. E. Brown were appointed a committee to examine all securities on hand in New York, and all that are
41 used as collaterals for payment of the liabilities of S., H., H., and C.

To ascertain what securities are available, and generally to make such an examination of the properties of S., H., H., and C. in New York as they would make if examining for an executor of one of the parties, and to make out a schedule of all securities belonging to S., H., H., and C. in New York, so that the several parties in interest can sign the schedule as of date as being correct on that date.

Adjourned.

W. E. BROWN, *Secretary.*

42 NEW YORK, *Sept. 11th, 1884.*

Meeting again called.

It is agreed that the order of consideration of affairs shall be as follows:

1st. Consolidation of all the lines of Southern Pacific system in one company;

2d. Separation of Central Pacific business from the Southern Pacific business;

3rd. Leasing of Central Pacific system to Southern Pacific system (new organization);

4th. General consolidation of lines from San Francisco to Newport News.

Adjourned.

W. E. BROWN, *Secretary.*

43

NEW YORK, *Sept. 25, 1884.*

Meeting assembled.

It was agreed that the Southern and Central Pacific Companies terminate their present leases, and that the Central lease from the Southern that portion of road between Goshen and Mojave. Then a running arrangement be made between the Central and the Southern Pacific Company (new organization) between Mojave and San Francisco and other points in California, as now exists between the Central Pacific R. R. Co. and the Atlantic & Pacific R. R. Co.

Adjourned.

W. E. BROWN, *Secretary.*

44

NEW YORK, *Sept. 26, 1884.*

Meeting with Mr. Pierce to discuss values of the several roads in the through line contemplated between New York and San Francisco.

It was agreed that the P. I. Co. exchange S. P. of California stock for Galveston, Harrisburgh & San Antonio stock (on road between Houston & San Antonio) on same basis of values as is embraced in the Southern Pacific organization.

Then P. I. Company to exchange with T. W. Pierce so that he will have two shares of Southern Pacific stock for every share he owns of G., H. & S. A. old stock.

Adjourned.

W. E. BROWN, *Secretary.*

45

NEW YORK, *Sept. 29, 1884.*

Meeting assembled; all present.

It was decided that the general offices of the Southern Pacific Company be located in San Francisco.

It was also decided to sell to the Central Pacific and Southern Pacific Railroad Companies the property owned in San Francisco by S., H., H., and C. that is now used for the terminal facilities of those roads.

The question of leasing or selling the bridges at Yuma and El Paso belonging to the P. I. Co. was discussed but no conclusion reached.

46 It was ordered that a division of the capital stock of the several construction companies, heretofore undivided, be made.

It was agreed that meetings be held every day, from eleven to three o'clock, and if any one of the four persons be absent the others should go on with the discussion of affairs.

Adjourned.

W. E. BROWN.

NEW YORK, *Sept. 30th, 1884.*

Assembled at 11 o'clock.

Previous minutes read by the secretary and approved.

It was ordered that the basis of values on properties east of El Paso should be changed as follows:

47 Texas & New Orleans shall be exchanged at the rate of 150 shares for 100 of stock of Southern Pacific Co.

Louisiana Western, 100 shares for 100.

Mexican International, 20 shares for 100.

The reorganization of the Southern Pacific Company, the question of the number of directors, and other matters connected therewith were discussed, but nothing definitely settled.

Adjourned at 3 o'clock.

W. E. BROWN, *Secretary.*NEW YORK, *Oct. 1st, 1884.*

Assembled at 11 a. m.

48 Leland Stanford was appointed a committee of one to formulate his proposed method of leasing the several roads forming the through line of Southern Pacific Company.

It was decided to take immediate action towards raising the capital stock of the Southern Pacific Company to 100 millions, and to have temporary certificates of stock printed, to be exchanged hereafter when steel plate certificates can be prepared.

Adjourned.

W. E. BROWN, *Secretary.*NEW YORK, *Oct. 2, 1884.*

Met at 11 a. m.

49 Further discussion was had as to basis of holdings in Southern Pacific Company of outside stockholders in Galveston, Har. & San A. Company and other companies. No definite conclusion reached.

Mr. Pierce was sent for and the matter discussed with him as to his interest in the stock of G., H. & S. A. between Houston & San Antonio.

Mr. Quintard was also called into council in order to ascertain his views relative to the new organization.

Adjourned.

W. E. BROWN, *Secretary.*NEW YORK, *Oct. 3, 1884.*

Met at 11 a. m.; all present.

50 A proposition was submitted to Mr. Pierce to give him 150 shares of stock of the Southern Pacific Co. for each 100 shares

he holds of the old stock of the Galveston, Har. & San Antonio Company.

Mr. Pierce accepted the proposition and agreed to put in his 28,059 shares on the basis proposed.

It was then agreed (Mr. Pierce being present) that certificates of stock of the Southern Pacific Company be printed for temporary use, and be issued to parties in accordance with the basis agreed upon. It was further agreed that certificates of stock with coupon warrants attached be ordered made from steel plates, to be exchanged, when ready, for the printed certificates.

Adjourned.

W. E. BROWN, *Secretary*.

51

NEW YORK, Oct. 6, 1884.

Met at 11 a. m.

The organization of Southern Pacific Company was further discussed and it was agreed to pay in one million dollars cash into its treasury in accordance with the terms of the charter, and it was further agreed to obtain by telegraph the resignations of Mr. Echol and Mr. McHenry in order to substitute new directors in their places.

Mr. R. T. Wilson came in to discuss the project of putting up the levee between points on the Memphis & New Orleans Railroad that is liable to overflow. After a long discussion, the final decision was postponed until to-morrow.

52

Mr. Bond sent word that he wants an option for account of Speyer & Co. to purchase 18,000 shares of Central Pacific stock at forty-five. No answer given to the proposition.

Adjourned.

W. E. BROWN, *Secretary*.

NEW YORK, Oct. 6th, 1884.

Met at 11½ a. m. Read minutes of last two meetings.

It was agreed that the directors of the Southern Pacific Company when permanently organized shall consist of seven, viz, C. P. Huntington, of New York; T. W. Pierce, of Boston; and five others, to be selected from San Francisco, and that the general offices be located in San Francisco.

53

Mr. R. T. Wilson and Mr. Evors came in with a report on lands in Mississippi Delta belonging to Memphis & New Orleans R. R. Co. and to Mr. Evors. The report was read, but no definite action taken thereon.

Adjourned.

W. E. BROWN, *Secretary*.

Met at 11½ a. m.; all present.

It was unanimously agreed to pay into the Southern Pacific Company \$950,000 cash, so as to make up one million dollars actually paid in on the capital stock of the company.

It was further agreed to invest one million dollars of cash belonging to Southern Pacific Company in the six per cent 2d mortgage bonds of the Galveston, Harrisburg & San Antonio Railroad Company, at the rate of ninety.

Adjourned.

W. E. BROWN.

NEW YORK, Oct. 8/84.

OCTOBER 9TH, 1884.

Met at 11-1/2 a. m.

General discussion of business matters, particularly of Central Pacific affairs, as connected with the organization of the new Southern Pacific Company.

Secretary instructed to hasten all matters in connection with organization of the Southn Pac. Company.

Adjourned.

W. E. BROWN, Sec.

55

NEW YORK, Oct. 10, 1884.

Met at 11-1/2 a. m.

Secretary makes up statement of Central Pacific stock on hand as follows:

	Shs.
Leland Stanford, in N. Y.-----	25,200
Do. (say), in S. F.-----	5,000
Chas. Crocker, N. Y.-----	32,700
Do., S. F.-----	32,299
Mrs. Hopkins, N. Y.-----	21,250
Do., S. F.-----	336
C. P. H., N. Y.-----	16,850
Do., N. Y.-----	133,635
P. I. Co., Speyer & Co.-----	18,700
Do., Lloyd & McK.-----	5,200
Total shares, 592,755; 157,535; 26.5%.	

Some discussion with Mr. Huntington as to Chesapeake and Ohio matters and their connection with other joint interests.

Adjourned.

W. E. BROWN, Secty.

56

NEW YORK, Oct. 13th, 1884.

Met at 11-1/2 a. m.

Mr. Quintard appeared to talk over his interest in the Morgan Company and his proposed connection with the Southern Pacific Company. He desires a dividend on Morgan Company's assets before it is put into the new company.

It is agreed by all parties that the liabilities of all the companies in which they are interested be provided for as far as leaving
57 sufficient securities to provide collaterals for their payment.

After such provision is made, it is agreed that all bonds and stocks belonging to the various companies be divided among the stockholders.

It is agreed to pay into P. I. Co. \$1,244,200 in S. P. of Cal. stock to meet the trade with T. W. Pierce for exchange of stocks. Stock to be paid in as follows: L. S., 311,100; C. P. H., 311,000; C. C., 311,100; Mrs. H., 311,000; \$1,244,200.

Adjourned.

W. E. BROWN, Secty.

58

NEW YORK, Oct. 14th, 1884.

Met at 11-1/2 a. m.

Mr. Tweed appeared and suggested that the meeting of the Southern Pacific Company called for to-day be postponed for one week, until the million dollars of subscription be fully paid and certificate thereof be filed with Secretary of State of Kentucky.

In view of the cost of the railroad from San Antonio to the Rio Grande being very largely in excess of the market value of the bonds received for the construction of the road, it is agreed that the 2d

mortgage bonds now in possession of G., H. & S. A. Company,
59 amounting to \$3,355,000, be transferred to the contracting company on terms that shall be just and equitable to the Gal.

Har. & San Antonio Co.

Adjourned.

W. E. BROWN, Secty.

NEW YORK, Oct. 15, 1884.

Met at 11-1/2 a. m. Mr. Crocker absent. Mr. Bond, of Speyer & Co., came in and some of the details of the organization of the Southern Pacific Company were explained to him by Governor Stanford.

No definite action taken.

Adjourned.

W. E. BROWN.

60

NEW YORK, Oct. 20, 1884.

Met at 12 o'clock.

It was agreed that at meeting of stockholders of the Southern Pacific Company to-morrow, that the order of business should be

1st. Raising capital stock to one hundred millions.

2d. Changes in by-laws.

3d. Fixing location of general offices.

4th. Increase in number of directors.

Mr. Wilson appeared and urged his associates in the Memphis & New Orleans line to join in the completion of the branch line to ———.

It was agreed that when the bonds on the main line were executed and delivered free from injunctions or legal restraints that the branch road to ——— might be finished under the present charter and that S., H., H., and C. would furnish their proportion of the money. Mr. Wilson gave his positive assurance that not more than \$95,000 would be required for immediate use.

Adjourned.

W. E. BROWN.

NEW YORK, Oct. 21st, 1884.

Met at 11-1/2 a. m. Mr. Hopkins absent.

Discussion about permanent organization of Southern Pacific Company. At two o'clock the stockholders of that company met and added to its capital stock, making it one hundred millions, and added two more directors to the board.

Adjourned.

W. E. BROWN, *Secretary*.

NEW YORK, Oct. 22d, 1884.

Met at 11-1/2 a. m.

Memphis & New Orleans line:

455 miles, at \$30,000	-----	\$13, 650, 000
S., H., H., and C. proportion	-----	8, 190, 000
Wilson proportion	-----	5, 460, 000
	-----	\$13, 650, 000
S., H., H., and C. proportion	-----	\$8, 190, 000
5% off	-----	409, 500
	-----	\$7, 780, 500

63

NEW YORK, Oct. 23, 1884.

Met at 11-1/2 a. m.

General discussion of affairs; no conclusions reached.

Adjourned.

W. E. BROWN, *Secty.*

NEW YORK, Oct. 24, 1884.

Met at 11-1/2 a. m.

Memorandum of proposition for equalizing accounts was suggested and submitted by the secretary, as follows:

Use bonds belonging to S. D. Co. to the extent of \$14,000,000 to pay on account of notes due S., H., H., and C. from that Co.
64 at a valuation of, say, 85¢ on the dollar.

This would give \$3,500,000 to each of the four, in bonds. Then let the P. I. Co. buy and sell these bonds at same rate from the parties interested, until the accounts are made equal, as follows:

L. S. has due to him	12, 471, 390. 78	
Cr. \$3,500,000 bonds, at 85	2, 975, 000.	
		\$15, 446, 390. 78
C. P. H. has due to him	14, 502, 341. 71	
Cr. \$1,100,000 bonds, at 85	935, 000.	
		\$15, 437, 341. 71
C. C. has due to him	16, 266, 454. 99	
Dr. 1,000,000 bonds, at 85	850, 000.	
		\$15, 416, 454. 99
65 Mrs. H., due to her	17, 088, 585. 70	
Dr. 2,000,000 bonds, at 85	1, 700, 000	
		\$15, 388, 585. 70

This leaves \$1,600,000 in treasury of P. I. Co.

Adjourned.

W. E. BROWN, *Secretary.*

NEW YORK, Oct. 28, 1884.

Met at 11-1/2 a. m.

The question of using the bonds of G., H. & S. A. Co. belonging to the S. D. Co. for making payments on the notes of S. D. Co. was discussed with Mr. Pierce, and all agreed that the proposition was a good one.

66 The following communication was sent to board of directors of Galveston, Harrisburgh & San Antonio Railroad Co.:

NEW YORK, October 28th, 1884.

To the board of directors of the Galveston, Harrisburgh & San Antonio Railroad Co.

GENTLEMEN: Whereas the Southern Development Company has constructed a railroad and telegraph line from El Paso to San Antonio, in the State of Texas, under a contract with your company, and has received for said construction 13,416 five per cent first-
67 mortgage bonds of \$1,000 each, and 3,354 six per cent second-mortgage bonds of \$1,000 each, and the capital stock issued upon the said line of railroad and telegraph;

And whereas the difficulties which were encountered in the said construction were greater than were anticipated, involving an unexpected outlay of more than three millions of dollars;

And whereas the Galveston, Harrisburgh & San Antonio Railroad Company have issued an additional amount of second-mortgage bonds to the number of 3,355 of \$1,000 each, which it now has on hand in its treasury:

Now, therefore, in consideration of the foregoing premises, the Southern Development Company prays the board of directors of the Galveston, Harrisburgh & San Antonio Railroad Company to vote an additional payment on account of its contract with the Southern Development Company, as part remuneration for the loss it has sustained in the construction of the said railroad and telegraph line, to the extent of the said 3,355 second mortgage bonds which it now has on hand.

Very respectfully,

W. E. BROWN,
President pro tem. Southern Dev. Co.

NEW YORK, Oct. 29, 1884.

Meeting of stockholders of the Southern Dev. Co. at office of Leland Stanford.

Present: Leland Stanford, 10,000 shares; C. P. Huntington, 10,000 shares; Chas. Crocker, 10,000 shares; Mrs. M. F. S. Hopkins, by Timothy Hopkins, 10,000 shares; T. W. Pierce, 10,000 shares.

The following resolution was offered by Chas. Crocker and seconded by Timothy Hopkins:

Resolved, That the board of directors of this company be and are hereby authorized and requested to sell the first and second mortgage bonds of the Galveston, Harrisburgh & San Antonio Railroad Company now owned by the Southern Dev. Co. at the best price they can obtain, but not less than eighty cents on the dollar of their par value and accrued interest. The proceeds of such sale or sales to be applied exclusively to payments on account of outstanding liabilities of the Southern Dev. Co.

The resolution was unanimously adopted.

The following resolution was offered by T. W. Pierce and seconded by Chas. Crocker:

Resolved, That the board of directors of this company be authorized to exchange the capital stock owned by this company in the various railroad companies that constitute the Southern Pac. system, for the capital stock of the Southern Pacific Company, upon such terms as may be agreed upon by the officers of the several companies.

The resolution was unanimously adopted.

W. E. BROWN,
Prest. pro tem. Sou. Dev. Co.

NEW YORK, Oct. 30, 1884.

Met at 11-1/2 a. m.

General discussion about dividing securities and segregating securities belonging to other companies which are used for collaterals.

Mr. Wilson sends statement of contracts made between Memphis & New Orleans line and parties from whom it was purchased.

1st contract gave them one-sixth of the following securities: 500 miles \times \$20,000=10,000,000 income bonds; 500 miles \times 10,000=5,000,000 stock; which gives them \$1,666,666.67 inc. bonds, 833,333.33 stock; \$2,500,000.

1st mortgage to be limited to \$24,000 pr. mile.

73 2d contract gives them income bonds, 1,333,333.33; stock, 666,666.67; \$2,000,000.

1st mortgage limited to \$30,000 pr. mile.

Between the dates of the two contracts the sellers of the road had assigned about one-sixth of their interest in the securities to Hobart Smith & Co., who have not as yet fully assented to the provisions of the second contract. Mr. Wilson thinks, however, that they will probably do so.

Mr. Pierce came in and expressed his views as to contract with Wells, Fargo & Co. on Galveston, Har. & San Antonio Railroad. It was agreed (Mr. T. W. Pierce concurring) that as-
74 sets of the Southern Dev. Co. may be divided pro rata in kind as far as may be advisable, Mr. Pierce desiring that his proportion of said assets be kept intact, as collateral security for his portion of the indebtedness of the company until said indebtedness was paid.

Adjourned.

W. E. BROWN.

NEW YORK, Oct. 31, 1884.

Met at 12 o'clock.

Matters connected with the contract with Texas & Pacific
75 Railroad were discussed, Mr. Pierce being present and joining in the discussion.

Mr. Quintard and Mr. McAlpin came in to talk of the interest allowed the Morgan Company in the Southern Pacific Company, they not being satisfied with the arrangement to give 450 shares of stock of the new Co. for 100 shares of the old. Mr. McAlpin thought he would rather sell his stock at what it cost.

No conclusion reached.

Adjourned.

W. E. BROWN.

76

NEW YORK, Nov. 1, 1884.

Met at 10-1/2 a. m.

A general discussion as to division of securities was had.

It was agreed to divide \$6,000,000 Louisville, New Orleans & Texas Railroad bonds, and to wind up the affairs of the Western Dev. Co. as soon as may be, and to dispose of its property as soon and in such a manner as may be most advisable.

Also to divide \$140,000 of Los Angeles & San Diego bonds belonging to S., H., H., and C.

Also \$2,000,000 common stock of St. Louis & San Fran^{co} stock.

Also \$1,480,000 stock of Northern Railway Company.

Also \$140,000 stock of Los Angeles & San Diego R. R. Co.

Also stock of Park & Ocean Railroad Co.

Adjourned.

W. E. BROWN.

NEW YORK, Nov. 3, 1884.

Met at 11 a. m.

The matter of contract with Mr. Wilson was under discussion as to his percentage, to be allowed out of the Memphis and New Orleans bonds. It was agreed to sell Broadway Wharf property to C. P. R. R. Co.

That the G., H. & S. A. R. R. Co. pay its floating debt by 2nd mortgage bonds to be issued or that are now on hand.

Mr. Wilson came in and it was decided to settle with him on the basis of 5% on \$24,000 a mile for 355 miles of main line of Memphis & N. O. Road for his commission.

Adjourned.

W. E. BROWN, *Secty.*

79

NEW YORK, Nov. 4, 1884.

Met at 11 1/2 a. m.

It was agreed that the floating debt of the Texas & New Orleans R. R. be paid by its bonds at 90.

Also that an expert be put upon all the books of the companies that are to make up the Southern Pacific Company.

Accts. of Pier 37 to be charged to Morgan Co.

Also divide 3,999 Mexican International R. R. Co. and stocks of all construction companies.

Adjourned.

W. E. BROWN, *Secty.*

80

NEW YORK, November 5, 1884.

Met at 11½ a. m.

The question of leasing the Central Pacific system of roads to the Southern Pacific Company came up.

It was agreed to lease the properties and temporarily to fix the lease at fixed charges and a guarantee of 2% interest on capital stock and all the earnings of the Central Pacific system over and above the percentage until the amount reached 6% on its capital stock per annum. After 6% all profits to go to the Southern Pacific Company.

Adjourned.

W. E. BROWN, *Secretary*.

81

NEW YORK, Nov. 6, 1884.

Met at 11 a. m.

It was agreed by all that the Wells Fargo & Co.'s stock be sold as soon as the market would take it.

Boxes were ordered made for Messrs. Stanford, Crocker, and Mr. Hopkins for packing their bonds to be shipped to Cala.

NEW YORK, Nov. 7th, 1884.

Met at 11 a. m.

It was agreed to divide all the stocks of the Southern Dev. Company and the Atlantic & Pacific stock. The proportion due to T. V. Pierce to be held as collateral.

NEW YORK, Nov. 10, 1884.

82 DEFENDANTS' EXHIBIT (LYNCH) No. 22, MARCH 12, 1915.

Resolved, That the proposed suit by the Government of the United States to require the Southern Pacific Company to sell the capital stock of the Central Pacific Railroad is not in the public interest nor is there in our opinion any sufficient legal reason requiring that such suit should be brought.

The ownership of the Central Pacific Railroad Company by the Southern Pacific Company does not in any sense constitute a combination in restraint of trade. On the contrary, the lines of railroad owned by the Central Pacific Railroad Company and the lines of railroad owned by the Southern Pacific Railroad Company, all of which are, and have been since 1885, leased to and operated by the Southern Pacific Company, were built and extended practically as one system of railroads and by one ownership and control. The Central Pacific Railroad, the main line of which is from Ogden to San Francisco, was the original nucleus of this system of railroads. The transcontinental line, of which the Central Pacific Railroad

road is a part, was opened for traffic in 1869. The construction of the lines of the Southern Pacific Railroad, connecting with the Central Pacific Railroad, began in 1871. The main line from Goshen to Los Angeles was completed in 1876, and the line from Los Angeles to Fort Yuma was completed in October, 1877. This line was extended eastwardly from Fort Yuma to a connection with the Atchison, Topeka and Santa Fe R. R. at Deming in March, 1881, with the Texas and Pacific Ry. at Sierra Blanca in January, 1882, and with the Galveston, Harrisburg and San Antonio Ry. at Pecos, Texas, in February, 1883. The capital stock of the Southern Pacific Railroad Company was at all times held in substantially the same ownership and control as the stock of the Central Pacific Railroad Company, and as soon as any section of the Southern Pacific Railroad was opened for operation, it was leased to and operated by the Central Pacific Railroad Company as lessee, which lease continued until February 1, 1885, when the lease of the lines of the Southern Pacific Railroad to the Central Pacific Railroad was cancelled, and a new lease of the Southern Pacific Railroad lines made to the Southern Pacific Company, which at all times since has been the lessee in possession of and operating said lines, such lease being for the term of 99 years. At the same time, the Southern

Pacific Company became the lessee of the lines of the Central Pacific Railroad Company for the term of 99 years, and has at all times since been in possession of and operating the lines of that company. The lines of railroad, therefore, comprised in the ownership of the Central Pacific Railroad Company and the Southern Pacific Railroad Company were never in separate ownership or in competition, but have at all times been practically in one ownership and control and have been built up, developed, and operated as a unified system of roads responsive to the demands of the communities served as much as if the same had been in the ownership and control of one company. To separate the ownership of these lines, therefore, breaks up the unified system and naturally impairs the efficiency of that system to serve the community. Such separation leaves the Southern Pacific Railroad without a through line and connection necessary to unite its different branch lines together for operation and also deprives it of terminals and main lines which are essential to the service of the community reached by its lines. Likewise the Central Pacific Railroad in separate ownership and control will be left without terminal properties and connections necessary for its successful operation, all of which will necessarily disturb the service that these lines are now giving as a unified system to the public. We are also persuaded that the evils of the proposed dissolution could not be offset

by any compensating advantages to be derived from the proposed creation of two unequal competitors.

Resolved, That this body fully endorses the decision of the railroad commission of California in so far as it gives reasons against the breaking up and separation of the lines now operated by the Southern Pacific Company in California, and we believe that such decision was in the very best interests of the public and should be sustained. We further maintain that there is no business reason for the suggested separation, and such separation would be a commercial injury to the people of this State and against our interest.

SAN FRANCISCO CHAMBER OF COMMERCE,
C. F. MICHAELS, *President*.

86

DEFENDANTS' EXHIBIT NO. 23, MARCH 12, 1915.

(1. Report of the Southern Pacific Railroad Company for the year ending June 30, 1868.)

OFFICE CENTRAL PACIFIC R. R. OF CALIFORNIA,
C. P. HUNTINGTON, V. P.,
No. 54 WILLIAM STREET,
New York, Sept. 25, 1868.

Hon. O. H. BROWNING,

Secretary of the Interior, Washington, D. C.

DR. SIR: Herewith I have the honor to hand you the annual report of the Southern Pacific Railroad Company, as required by the acts of Congress in relation thereto, & of which please acknowledge the receipt.

Resp'y, yours,

C. P. HUNTINGTON.

87 Annual report of the Southern Pacific Railroad Company to the Secretary of the Interior of the United States.

* * * * *
Second. The following are the names of the directors and all other officers of the said company:

Directors: T. G. Phelps, San Mateo, California; B. G. Lathrop, San Francisco, California; W. B. Carr, San Francisco, California; T. B. Shannon, San Francisco, California; Lloyd Tevis, San Francisco, California; Lewis Cunningham, San Francisco, California; Edgar Mills, Sacramento, California.

President, T. G. Phelps; secretary, Lloyd Tevis; treasurer, Edgar Mills.

Third. The amount subscribed of the capital stock of the said company is eighteen thousand shares, of one hundred dollars each,

amounting to one million eight hundred thousand dollars (\$1,800,000).

The amount actually paid in on the said capital stock is seventy thousand dollars (\$72,000.00).

Fourth. The following is a description of the lines of the road of said company surveyed and of the lines thereof fixed upon for the construction of the road:

Up to this date but few lines have been surveyed and only so much were necessary to commence and carry on the construction of that portion of the railroad of the company lying between the towns of San Jose and Gilroy, in the county of Santa Clara. The line thus surveyed and finally located is thirty miles in length and runs in nearly a direct line between those points. The work of grading that portion of the road of the company is rapidly progressing and will soon be completed. The iron for laying the track on this portion of the line has been purchased and shipped and is now on its way to San Francisco, and the company confidently expect to have the said thirty miles between San Jose and Gilroy completed on or before the 1st day of April, 1869.

The company has not deemed it necessary up to this date to prosecute any surveys beyond Gilroy, as for a long distance beyond the line will run through valleys, which need surveys only as the work progresses.

The actual cost of the surveys up to this date is eighteen hundred and twenty-nine 50/100 dollars (\$1,829.50).

Fifth, sixth, and seventh. As no portion of the railroad of the company is yet completed or in running order, no amounts have been received from passengers or for freight and no expenses have been incurred in running or operating the same.

Eighth. The following is a statement of the indebtedness of said company:

The said company has issued to H. M. Newhall, Charles Mayne, and Peter Donahue, as trustees for its bondholders, four hundred and eighty bonds for one thousand dollars each, amounting to four hundred and eighty thousand (\$480,000) dollars, dated July 1st, 1868, and payable thirty years from date, with interest at the rate of six per cent per annum, and paid to said parties upon a contract for the construction of that portion of the railroad of said company between San Jose and Gilroy. These bonds are secured by a mortgage upon said portion of said railroad.

No reports have been made to the company from its engineers or officers.

T. G. PHELPS,
President of Southern Pacific R. R. Co.

STATE OF CALIFORNIA,

City and County of San Francisco, ss:

Timothy G. Phelps, being duly sworn, says that he is the president of the said Southern Pacific Railroad Company, and that the foregoing report and statement by him subscribed is true and correct, according to the best of his knowledge, information, and belief.

T. G. PHELPS.

Subscribed and sworn to before me, Henry Haight, a notary public, and as such authorized to administer oaths this 11th day of September, 1868, as witness my hand and official seal.

HENRY HAIGHT,
Notary Public.

91 (Endorsement:) Southern Pacific R. R. Co. Annual report to Secretary of Interior.

(Endorsement:) Department of the Interior. A-8. Received Sept. 26, 1868. Dated Sept. 25, 1868. From C. P. Huntington, New York City, N. Y. Subject: Transmits annual report of Southern Pacific Railroad Company. Action: Ack. Oct. 2, 1868. Registered, B. 1, page 73. Filed.

92 DEFENDANTS' EXHIBIT No. 23, MARCH 12, 1915.

(2. Report of the Southern Pacific Railroad Company for the year ending June 30, 1870.)

Fifth, sixth, and seventh. As the completed portion of the road between San Jose and Gilroy is in the hands of the contractors no amounts have been received by the company from passengers or for freight, and no expenses have been incurred by it in running or operating said completed portion.

93 DEFENDANTS' EXHIBIT No. 23, MARCH 12, 1915.

(3) Report of the Southern Pacific Railroad Company for the year ending June 30, 1871.

Annual report of the Southern Pacific Railroad Company (of California) to the Secretary of the Interior for the year ending June 30th, 1871.

First. The following are the names of the stockholders of said company, with their places of residence:

Leland Stanford, Sacramento, California; Chas. Crocker, Sacramento, California; C. P. Huntington, New York, N. Y.; Mark Ho

kins, Sacramento, California; Charles Mayne, San Francisco, California; Peter Donahue, San Francisco, California; A. E. Head, San Francisco, California; Lloyd Tevis, San Francisco, California; H. M. Newhall, San Francisco, California; county of San Mateo, California.

Second. The following are the names and residences of the directors and all other officers of the company:

Directors: Chas. Crocker, Sacramento, California; Leland Stanford, Sacramento, California; C. P. Huntington, New York, N. Y.; Mark Hopkins, Sacramento, Cal.; Peter Donahue, San Francisco, Cal.; Lloyd Tevis, San Francisco, Cal.; Charles Mayne, San Francisco, Cal.

Officers: President, Chas. Crocker, Sacramento; vice prest., C. P. Huntington, New York; treasurer, Mark Hopkins, Sacramento; secretary, J. L. Willcutt, San Francisco; chief engineer, Geo. E. Gray, San Francisco.

Third. The amount subscribed to the capital stock is fifty-two thousand two hundred and forty shares (52,240) of one hundred (\$100) dollars each, amounting to five million two hundred and twenty-four thousand (\$5,224,000) dollars.

The amount actually paid in on the said capital stock is one million nine hundred and ninety-four thousand eight hundred (\$1,994,800) dollars.

Fourth. Two hundred and eighty (280) miles of line have been surveyed, as described in accompanying copy of report of the chief engineer.

The cost of surveys has been thirty thousand and ninety 52/100 dollars (\$30,090.52).

Fifth. The amount received for transportation of passengers for the year is two hundred and fifty-six thousand four hundred and ten 13/100 (\$256,410.13) dollars.

Sixth. The amount received for transportation of freight for the year is one hundred and forty-four thousand four hundred and forty-four 48/100 (\$144,444.48) dollars.

Seventh. The expenses of the said road and its fixtures for the year is two hundred and twenty-two thousand four hundred and twenty-seven 06/100 (\$222,427.06) dollars.

Eighth. The following is a statement of the indebtedness of said company:

The said company has issued to H. M. Newhall, Chas. Mayne, and Peter Donahue, as trustees for its bondholders, four hundred and eighty (480) bonds for one thousand dollars (\$1,000) gold coin each, amounting to four hundred and eighty thousand dollars (\$480,000), dated July 1st, 1868, and payable thirty years from date with interest at the rate of six (6) per cent per annum and paid to said

parties upon a contract for the construction of that portion of the railroad of said company between San Jose and Gilroy. These bonds are secured by a mortgage upon said portion of said railroad.

The said company having on the 13th day of October, 1870, taken possession of the San Francisco and San Jose Railroad (from San

Francisco to San Jose) and a consolidation of the capital
97 stock, debts, property, and assets & franchises of said companies having been made as provided by law, it is also indebted for seven hundred and forty bonds of the last-named company of one thousand dollars (\$1,000) gold coin each, amounting to seven hundred and forty thousand dollars (\$740,000), the said bonds having been issued by the said San Francisco and San Jose Railroad Company to Charles McLaughlin and Alexander H. Houston as trustees for its bondholders and dated July 1st, 1864, and payable twenty years from date with interest at rate of eight (8) per cent per annum. The said bonds were paid to said parties upon a contract for construction of that portion of the railroad between San Francisco and San Jose and are secured by a mortgage upon said portion of said railroad.

Ninth. The accompanying report of the chief engineer is the only report that has been received from any officer of the company during the year.

STATE OF NEW YORK,

City & county of New York, ss:

C. P. Huntington, being duly sworn, says that he is now the president of the Southern Pacific Railroad Company of California;
98 that he was elected to that office on the 14th day of August, 1871, in the place of Charles Crocker, whose term of office expired on that day; and that the foregoing report of the condition and operations of said company for the year ending June 30th, 1871, is true and correct.

C. P. HUNTINGTON,
President.

STATE OF NEW YORK,

City & county of New York, ss:

On this thirtieth day of September, 1871, before me came C. P. Huntington, known to me to be the president of the Southern Pacific Railroad Company of California, and being by me duly sworn, did

make oath & say that the above affidavit by him subscribed is true to his best knowledge, information, and belief.

Witness my hand and notarial seal the day and year above written.

[SEAL.]

DAN MARVIN,
Notary Public.

99 Southern Pacific Railroad Company—Copy of report
of the chief engineer for year ending June
30th, 1871.

To the president and directors of the Southern Pacific Railroad of California:

GENTLEMEN: I herewith report the progress of surveys and continuation on the Southern Pacific Railroad during the current year ending June 30th, 1871.

Since the last annual report of my predecessor the surveys have been diligently prosecuted. Two hundred and eighty miles have been surveyed and explored. Of this nearly the entire distance has been in exploring, from the completed portion of your road at Gilroy, through the different passes over the Mount Diablo range to the San Joaquin Valley. The surface material encountered in these passes in this range is generally a decomposed sand stone, with considerable clay and sand, through which the water has cut deep channels and canons, making the progress of survey a work of time and study.

100 From the data obtained by my predecessors and from the survey continued under my charge we hope to be enabled to lay before you in a few months a detailed report of the work done and the most feasible route for a railroad embraced under your charter. These surveys have progressed necessarily very slow, owing to the mountainous regions traversed and the absence of reliable information of that portion of the State.

A provision of your charter requiring an additional twenty miles of railroad and telegraph line to be completed from Gilroy southward on July 1st, 1871, has been complied with; the twenty miles being completed, equipped, and in running order on June 30th, 1871, and over which excursion trains ran the entire distance from Gilroy to the end of the track on the 1st day of July, 1871.

Respectfully yours, &c.,

(Signed) GEO. E. GRAY,
Chief Engineer Southern Pacific Railroad.

A true copy.

Attest:

J. L. WILLCUTT,
Secretary Southern Pacific Railroad Company.

1710

UNITED STATES VS. SOUTHERN PACIFIC CO.

101 OFFICE SOUTHERN PACIFIC R. R. CO. OF CALIFORNIA,
C. P. HUNTINGTON, V. P.,
No. 54 WILLIAM STREET,
New York, September 30, 1871.

HON. C. DELANO,
Secretary of the Interior,
Washington, D. C.

SIR: With this please find the annual report of the Southern Pacific Railroad Company of California to the Secretary of the Interior for the year ending June 30th, 1871.

I have the honor to be,
Very respectfully, yours,

C. P. HUNTINGTON, *Pres.*

102 (Endorsement:) (Southern Pac.). D-11. Department of the Interior. Received 2 Oct., 1871. Dated 30 Sept., 1871. From C. P. Huntington, prest., 54 Wm. St., N. Y. Subject: Transmits report of Southern Pac. R. R. Co. of Cal. for year ending 30 June, 1871. Action: Filed. Ackd. 14 Nov., '71. ———, chief clerk Registered 1-352.

103 DEFENDANTS' EXHIBIT No. 23, MARCH 12, 1915.

(4. Report of the Southern Pacific Railroad Company for the year ending June 30, 1873.)

Office Southern Pacific R. R. Co. of California, No. 54 William Street, C. P. Huntington, V. P.

NEW YORK, Oct. 2d, 1873.

HON. C. DELANO,
Secretary of Interior,
Washington, D. C.

SIR: I have the honor to hand you herewith the annual report of the Southern Pacific Railroad Company of California, to be placed on file in your department, and remain,

Respectfully,

C. P. HUNTINGTON, *President.*

104 Annual report of the Southern Pacific Railroad Company to the Secretary of the Interior, Washington, D. C.

In pursuance of the provisions of an act of Congress entitled "An act relative to filing reports of railroad companies", approved June 25th, 1868, the undersigned, the president of the Southern Pacific

Railroad Company, presents the following report for the year ending June 30th, 1873:

First. The following are the names of the stockholders of said company, with their places of residence:

County of San Mateo, California; Contract & Finance Co., Sacramento, Cal.; Chas. Crocker, Sacramento; Peter Donahue, San Francisco, Cal.; C. P. Huntington, New York; Mark Hopkins, Sacramento, Cal.; A. E. Head, San Francisco, Cal.; Charles Mayne, San Francisco; H. M. Newhall, San Francisco; Leland Stanford, 105 ford, Sacramento, Cal.; Lloyd Tevis, San Francisco, Cal.; J. L. Willcutt, San Francisco.

Second. The following are the names and residences of the directors and all other officers of the company:

Directors: C. P. Huntington, New York; Leland Stanford, Sacramento, Cal.; Mark Hopkins, Sacramento, Cal.; Lloyd Tevis, San Francisco, Cal.; Peter Donahue, San Francisco, Cal.; Chas. Mayne, San Francisco, Cal.; J. L. Willcutt, San Fran^o.

Officers: President, C. P. Huntington, New York; vice presdt., Lloyd Tevis, San Francisco, Cal.; treasurer, Mark Hopkins, Sacramento, Cal.; secretary, J. L. Willcutt, San Francisco, Cal.; chief engineer, Geo. E. Gray, San Francisco; general superintendent, A. N. Towne, Sacramento, Cal.; land agent, B. B. Redding, Sacramento, Cal.

106 Third. The amount subscribed to the capital stock is one hundred and thirty-one thousand eight hundred and ninety-four (131,894) shares of one hundred (100) dollars each, amounting to thirteen million one hundred and eighty-nine thousand four hundred (13,189,400) dollars.

Fourth. Explorations and examinations of former preliminary lines have been continued since the last fiscal report, amounting to about seven hundred and fifty (750) miles. One hundred and fourteen 50/100 (114 50/100) miles of road have been permanently located and sixty-four 50/100 (64 50/100) miles completed. Twenty (20) miles of this latter distance is on the route from Tipton to Delano and fifty (50) miles on the line from Tehichipa Pass to Fort Yuma, the latter distance commencing at the San Fernando Pass, via Los Angeles, thence towards San Bernardino, terminating about twenty-nine (29) miles easterly from Los Angeles. Forty-two 50/100 (42 50/100) miles have been completed on the branch line in the Salinas Valley. The cost of the surveys to this date has been one hundred and five thousand (105,000) dollars.

107 Fifth. The amount received for transportation of passengers for the year is four hundred and sixty-nine thousand seven hundred and eighty-nine 63/100 (469,789 63/100) dollars.

Sixth. The amount received for transportation of freight for the year is four hundred and eighty-six thousand four hundred and sixty-five $37/100$ (486,465 $37/100$) dollars.

Seventh. The expenses of said road and its fixtures for the year are four hundred and fifty-eight thousand seven hundred and thirty-nine $14/100$ (458,739 $14/100$) dollars.

Eighth. The following is a statement of the indebtedness of the company:

The company has issued eight thousand and fifty (8,050) first-mortgage bonds of \$1,000 each gold coin, amounting to eight million and fifty thousand (8,050,000) dollars, all bearing date of November 1st, 1870, and payable on the 1st day of April, 1901, with interest,

payable semiannually, at the rate of six per cent per annum.
108 Appended hereto are copies of the annual reports of the general superintendent and land agent for the fiscal year ending June 30, 1873.

Owing to the illness of the chief engineer, his report is incomplete, but the data herewith furnished has been obtained from information on file in his office.

C. P. HUNTINGTON, *President.*

* * * * *

SOUTHERN PACIFIC RAILROAD CO.,
GENERAL SUPERINTENDENT'S OFFICE,
San Francisco, August 8th, 1873.

C. P. HUNTINGTON, Esq.,

President Southern Pacific R. R. Co., New York.

DEAR SIR: Herewith I respectfully submit statement of the operation and business of the road for the fiscal year ending June 30th, 1873, together with comparative statement of the earnings and expenses of the previous year.

San Joaquin Valley Branch.—That portion of the road which is temporarily leased and operated by the Central Pacific R. R.
109 Co. in the San Joaquin Valley from Goshen to Tipton, 20 $9/10$ miles, was opened up for business July 25th, 1872; also from Tipton to Delano, 20 $3/10$ miles, July 14th, 1873.

Extension of the road.—The extension of the road in the Salinas Valley from Salinas City to Soledad, distance 25 $3/10$ miles, is completed and will be put in operation on the 12th inst. This opens up a new section of the country, from which a large increase of business may be expected.

Number of miles road operated:

	Year ending June 30—	
	1872.	1873.
Average number of miles operated (exclusive of the above)		
was -----	100	121 $6/10$
* *		

SOUTHERN PACIFIC RAILROAD CO.,

LAND DEPARTMENT,

Sacramento, June 30, 1873.

To the President and Directors of the Southern Pacific Railroad Company.

GENTLEMEN: The route of the road in this State on which the Land Department at Washington ordered the lands to be withdrawn is four hundred and eighty miles long, extending from San Jose through the San Joaquin Valley and Tehichipa Pass to the Colorado River. The reservation of lands extends to the odd-numbered sections for thirty miles on each side of the road, twenty miles of which are directly granted if vacant, and when not vacant a sufficient amount is to be taken from the unappropriated land between the twenty and thirty mile limits to make up the deficiency.

I have obtained the records from the local land offices, which show that there are enough of vacant lands between the twenty and thirty mile limits from which to obtain indemnity for those that are settled upon or reserved within the twenty-mile limit or grant proper. Therefore it is safe to state that the railroad company will receive, upon the completion of the road, the full amount of its land grant, or 6,144,000 acres.

About one-third of this land is situated in the San Joaquin, Tulare, and other fertile valleys in the southern part of the central portion of this State. Of these lands only 62,257 09/100 acres have been contracted to be sold.

Three thousand applications to purchase have been received and filed in this office. Sales could be made daily on the applications, but I have deemed it (in the absence of instructions) for the best interest of the company to withhold land from sale until more of the road shall have been completed and patents received. At least fifteen hundred of the applicants have actually settled upon the lands of the company and are improving and cultivating them, thus enhancing the value not only of the land occupied but of those which are contiguous. The fact that ninety miles of the main trunk of the railroad and that sixty miles of the Pajaro and Salinas branch of it have been constructed directly through the grant, as well as the continued influx of population, is having the effect of increasing the average price of the farming land, of which the company has vast tracts in many of the most fertile valleys in the State and those most noted for the excellence of their agricultural products.

The company has built ninety 26/100 miles of the road, which has been accepted by the Government, viz, fifty 26/100 miles, commencing

at San Jose, in Santa Clara County, the initial point, and running south therefrom, and forty miles commencing at Goshen, in Tulare County, and running south therefrom to a point within one $\frac{2}{3}$ mile north of the town of Delano.

112 Part of the lands between San Jose and the fiftieth 26/100 mile, has been listed in the U. S. land office and are in process of being patented to the company. The Commissioner of the General Land Office is now having prepared a diagram of the definite limits of the grant along the line of the road between Goshen and Delano. As soon as it shall be finished and official copies thereof received at the local land office listings of the lands will be immediately asked for and the same forwarded to Washington for approval and patenting.

When the patents shall be received the lands will be immediately graded and prices fixed. After this the lands will be ready for disposal whenever the board of directors shall order the sales to commence.

Respectfully, &c.,

(Sg'd)

B. B. REDDING, *Land Agent.*

* * * * *

113 DEFENDANTS' EXHIBIT NO. 23, MARCH 12, 1915.

(5. Report of the Southern Pacific Railroad Company for the year ending June 30, 1874.)

OFFICE SOUTHERN PACIFIC R. R. CO. OF CALIFORNIA,

C. P. HUNTINGTON, *PREST.,*

NO. 9 NASSAU STREET,

New York, Dec. 8th, 1874.

Hon. C. DELANO,

Secretary of the Interior, &c., &c.,

Washington, D. C.

SIR: Referring to your letter, addressed to me under date of October 16th, 1874, asking for a statement of the entire cost of the road and fixtures of the Southern Pacific Railroad Company up to the date of the last annual report, 30 June, 1874, I hand you herewith a copy of the annual report of the Southern Pacific R. R. Company for the year ending June 30th, 1874, which will give you the desired information.

Very respectfully, your obedient servant,

C. P. HUNTINGTON, *President.*

* * * * *

114 Annual report of the board of directors of the Southern Pacific Railroad Company to the stockholders for the year ending June 30th, 1874. New York: Evening Post Steam Presses, 41 Nassau Street, cor. Liberty. 1874.

Annual report of the board of directors.

OFFICE SOUTHERN PACIFIC RAILROAD COMPANY,
No. 9 NASSAU STREET,
New York, September, 1874.

To the stockholders:

Your president and board of directors herewith submit such reports of subordinate officers as will give a general view of the operations of the road for the fiscal year ending June 30, 1874, and the financial condition of the company at that date. To these reports your careful consideration is invited.

Capital stock:

The amount of capital stock authorized is.....	\$70,000,000
The amount of capital stock subscribed is.....	15,429,200
The amount of capital stock paid in is.....	14,071,100

115 Progress of construction.—Since the last report the Contract and Finance Company that has the contract for building the road has completed seventy-five (75) miles, which, with the amount given in previous reports, make 278 miles of completed road.

Condition of the road and equipment.—For a statement in detail of the condition of the road and equipment, together with the cost of repairing the same, for the year ending June 30, 1874, you are referred to the report of the general superintendent, submitted herewith. (See page 17.)

Earnings and operating expenses.—The earnings for the year were as follows, viz:

From freight.....	\$504,256.42
" passengers.....	512,637.53
" express.....	18,111.55
" rental.....	102,877.49
" storage.....	5,731.58
" miscellaneous.....	3,041.15
" mail service.....	13,682.62
" telegraph.....	2,400.00
Total.....	\$1,162,738.33
116 Operating expenses.....	463,674.34
Earnings over operating expenses.....	\$699,033.99

Comparative statement of earnings and operating expenses.—The earnings and operating expenses since the organization of the company have been as follows, viz:

Year.	Earnings.	Operating expenses.	Earnings over operating expenses.
1870 and '71, 9 months, Oct. 1, 1870, to June 30, 1871.....	\$430,097.50	\$222,427.06	\$207,670.44
1871 and '72.....	723,856.01	376,278.11	347,577.90
1872 and '73.....	1,035,311.56	458,739.14	576,572.42
1873 and '74.....	1,162,738.33	463,674.34	699,063.99

An examination of the above statement will show that while earnings have increased the ratio of operating expenses to earnings has decreased, being 52 per cent in the year ending June 30, 1871, 44 3-10 per cent in the year ending June 30, 1873, and only 39 8-10 per cent in the year ending June 30, 1874.

Financial condition.—The report of the secretary, herewith submitted (see page 29), gives a full exhibit of the earnings and 117 operating expenses, and also of the financial condition of the company at the close of the fiscal year ending June 30, 1874.

The Los Angeles division.—As your board thought that it would be for the best interest of the company to build that portion of your road from Los Angeles via San Geronio to Fort Yuma, on the Colorado River, to secure the trade of Arizona and Sonora, before completing the road from the Tulare Valley to Los Angeles, they have built 50 miles on that division during the past year. But as this division is not connected with that portion of the road running out from San Francisco, and as it can hardly be said as yet to have been fully opened for general business, the earnings have been light and are not included in the preceding statement. Since the 1st of April, 1874, the earnings and operating expenses on this division have been as follows, viz:

Month.	Earnings.	Operating expenses.	Earnings over operating expenses.
April.....	\$2,032.31	¹ \$2,172.01
May.....	6,553.09	5,222.07	\$1,331.02
June.....	6,738.94	4,704.47	2,034.47
Total.....	\$15,324.34	\$12,098.55	\$3,225.79

¹ Deficit, \$139.70.

118 The last annual report.—As the last annual report was not published until a late period, and but few copies circulated, the general statements in that report in regard to the organization of the company, the grants from the State of California and the United States, and the business prospects of the road, are repeated in this report.

Organization.—The present organization of the Southern Pacific Railroad Company was effected October 12, 1870, by the consolidation of the following companies, viz, the San Francisco & San Jose Railroad Company, the Southern Pacific Railroad Company, the Santa Clara & Pajaro Valley Railroad Company, and the California Southern Railroad Company, all of which had been duly incorporated under the laws of the State of California. By virtue of the consolidation the new company succeeded to all the rights, privileges, and franchises of the companies above named.

The object of the new corporation was to construct, equip, maintain, and operate a line of railroad from the city of San Francisco to a point on the Colorado River, in the southeastern portion
119 of the State, a distance of, say, six hundred and twenty-nine miles, with a branch from Tehachapi Pass to the Colorado River, at or near Fort Yuma, a distance of, say, three hundred and fifty-three miles.

Grants from the State of California and the city of San Francisco.—Your company has received from the State of California a grant of thirty acres of land, situated in what is known as Mission Bay, in the city of San Francisco, an equal amount having been granted to the Central Pacific Railroad Company.

Since the last report the tracks have been extended down Fourth Street to Louisiana Street, and thence along the water front on that street to Eldorado Street. This extension will secure the object so long desired, the bringing together of ship and car, and will largely increase the earnings of the road.

Land grant of the United States Government.—As before stated, the contract for building the road is such that it leaves to the company, unencumbered, all the lands granted by the act of Congress, excepting the right of way 200 feet wide through the public lands.

The length of road upon which lands have been granted is,
120 say, nine hundred and thirty-two miles. The grant embraces all unoccupied lands designated by odd-numbered sections for twenty miles on each side of the road; and when any of these odd-numbered sections have been reserved or otherwise disposed of the company has the right to select a sufficient amount from the unappropriated lands between the twenty and thirty mile limits to make up the deficiency. From examinations made in the local land offices

it has been ascertained that there is a sufficient amount of vacant land between the twenty and thirty mile limits from which to select, in place of land settled upon or reserved within the boundaries of the grant proper. It is therefore safe to say that the company will receive, upon the completion of the road, the full amount of land covered by the grant. The land agent of the company, after a careful examination and classification of the lands, places their value, at a low estimate, at \$30,000,000; and it is with much satisfaction that you can contemplate the ownership of this immense property, especially when you consider that its value to yourselves and the country has nearly all been created by your own energy and perseverance.

Your board would recommend that the lands be sold to actual settlers at low rates, according to location and quality, as soon
121 as arrangements for their sale can be completed, as it will be much more advantageous to the company to sell their lands at low prices and have them brought under cultivation at once than to hold them, even though much higher prices could be realized after a few years.

The policy of the General Government in granting each alternate section of land to aid in the construction of railroad lines through those districts far removed from navigable waters is fully justified by the rapid increase in the value of lands along the line of road so constructed.

Before the Southern Pacific Railroad was built, land in some of the great valleys through which it runs was of very little value, and there was no market for it even at the minimum Government price of \$1.25 per acre, while now, with the road in operation, it is being rapidly taken up at the price fixed by the Government, which is twice that charged for lands unaffected by these improvements, so that the Government not only receives the same amount of money that it would have received if no grant had been made to the railroad company but also has a market for its lands where there would have been none without the road. And this is not all; the construction of a line of railroad, with all the necessary fixtures and
122 buildings, adds largely to the amount of taxable property in every township through which it passes, and thus tends to lighten taxation on the people who settle along the line of the road.

Prospective business of the road.—There are several considerations that have an important bearing upon the prospective business of your road which demand special notice:

First. The construction of the railroad from Watsonville to Santa Cruz. This railroad will pass through the extensive redwood forest and will afford a vast tonnage for your road, as the timber will find a ready market in large quantities in the Salinas and other valleys.

long the line. A branch road is also nearly completed from your road to Monterey, which will give that town an all-rail connection with San Francisco and bring the business over your road.

Second. The towns and villages through which the Southern Pacific Railroad passes afford the most delightful as well as the most available suburban residence. San Jose, Santa Clara, Redwood City, Menlo Park, Belmont, and other places equally well located, with a climate that is unsurpassed, with the intelligence and refinement of their citizens, and their educational and religious advantages, afford great inducement to all who are seeking quiet and delightful residences within easy access of the city. Already many of the business men of San Francisco are finding a home beyond the city limits, and the steady and rapid increase of this suburban population guarantees to your road a large and profitable local business.

Third. The discovery of extensive deposits of coal in close proximity to the line of your road, which can be easily reached as the road is extended.

When we consider that coal from these deposits can be delivered in San Francisco over the low grades of your road at the minimum cost for transportation, and when we consider also the limited supply of coal on the Pacific coast from other sources, together with the fact that the road can supply itself with cheap fuel and secure a large increase in its business in the transportation of coal for domestic and manufacturing purposes, the importance of this interest can not well be overestimated.

Fourth. The general location of the Southern Pacific Railroad is peculiarly favorable for developing and controlling a large and remunerative miscellaneous business, for it occupies almost the only passes through which a railroad extending from San Francisco to the Colorado River can be built, and must therefore command the entire business between San Francisco and the southern portion of California, as well as northern Mexico and Arizona. At the Colorado River it will meet the Texas & Pacific Railroad, and when this connection is made it will give your road a direct communication by rail with all the southern and southwestern portions of the United States and the shortest line from San Francisco to New Orleans and the country bordering the Gulf of Mexico, over which you may look for much of the surplus grain from the southern half of California to pass on its way to the European market.

Fifth. The country tributary to your road embraces nearly one-third of the entire State of California, say 50,000 square miles. In traversing this large extent of country the road passes through some

of the finest valleys in California, such as the San Jose, Santa Clara, Pajaro, Salinas, Tulare, and the large and fertile valleys south of the Sierra Madre, in the counties of Los Angeles and San Bernardino. The soil in those valleys is exceedingly fertile and produces all kinds of vegetables and grain of the temperate zones and most of the fruits of the semitropical regions, such as oranges, lemons, limes, olives, apricots, figs, etc., in great abundance. Recent experiments in the culture of tobacco near Gilroy, where some four hundred acres were planted the past season, have shown that the soil in that part of the State is peculiarly adapted to that crop, the yield per acre being from 1,500 to 2,000 pounds of a superior quality, equal to the best Havana, and from 2,500 to 3,000 pounds per acre of the coarser varieties. Recent experiments have also demonstrated that jute, ramie, and cotton can be grown in great abundance along the line of your road, for which the producer will always find a ready sale and remunerative prices, as these products will bear transportation, and thus have access to the world's markets.

Among the foothills and on the slopes of the mountains are vast tracts of land abounding in wild oats and native grasses, which are very nutritious and afford pasturage for sheep and cattle throughout the entire year; and the temperature is so mild, even in winter, that shelter is seldom required. Nearly all the land in the foothills also produces the grape in great abundance, and much of it is considered the best vineland in the world, as it never fails to yield a crop. There

are also immense tracts of timberland covered with redwood, red cedar, pine, and other varieties, which will afford an extensive lumber business for the road; in short, the country traversed by and tributary to the Southern Pacific Railroad has almost every variety of land adapted to every branch of agriculture with a mild and healthful climate, and is already attracting the attention of emigrants from the Eastern States, as well as from the nations of Europe, and is being rapidly taken up along the line of the road and even in advance of its construction.

With all these vast and varied interests awaiting the construction of your road, the villages and cities with their rapid increase of population, the fertile valleys with their great abundance and variety of agricultural resources, the forests with their wealth of lumber, the mines with their vast supplies of coal and untold millions of the precious metals, we think you may reasonably hope for satisfactory dividends on your investments when the road is completed.

We can not, however, ignore the fact that at this time a spirit of hostility against property held in a corporate capacity is being aroused and stimulated among the people by a small portion of the

newspaper press and a class of people who never seem happy unless they are disturbing some legitimate interests.

127 The claim advanced is virtually this, in the case of railroads, that having been built and paid for by one company of men, they should be controlled by another who have no interest in them whatever, except as a means of transportation for themselves and the products of their own industry. But ownership and control can no more be separated in the management of railroads than in the conduct of any other legitimate business.

A sense of justice, as well as the necessities of the case, establish the principle that ownership and control must go together. Railroad companies must have passengers and freight to transport or their investment will be unremunerative, and the people along railroad lines must have easy and rapid transportation or the products of their industry would be of little value. And we hope and believe that the time will soon come when property in railroads properly managed will be as safe from excessive taxation, unfriendly legislation, and enormous awards for damages to persons and property as though owned by private individuals, for in the end excessive charges imposed upon the roads must be paid by those who use them.

The companies that are employing their time, energy, and
128 capital in constructing, equipping, and operating railroads, and the agriculturists and manufacturers are naturally, and of right should be, allies and not antagonists. And this fact will be fully recognized and understood when the agrarian war cry against corporate property has been placed to more correct views of the relation between labor and capital. That portion of your road now completed and in operation is earning more than sufficient to pay the interest on its bonded debt, and is increasing in value from month to month. Still your board would recommend that the company go forward with the work of construction with great caution, practicing the most rigid economy in operating the completed portion of your road, acquiring all necessary grounds for depots, sidings, machine shops, and other necessary purposes, and thereby strengthening the credit of the company so as to give its securities a high standing in the great financial centers from which the capital necessary for the completion of the road must be drawn; and then when the time comes, as it surely will, that capital invested in good railroad securities will be considered safe, this great work can be carried rapidly forward to completion.

129 In conclusion your president and board of directors would express their acknowledgments to all the officers and employes

of the company for their faithfulness and efficiency in the performance of their respective duties.

C. P. HUNTINGTON, *President*.

General superintendent's report.

A. N. TOWNE,

GENERAL SUPERINTENDENT'S OFFICE,

San Francisco, August 21, 1874.

C. P. HUNTINGTON, ESQ.,

President Southern Pacific R. R. Co., New York.

SIR: Herewith I respectfully submit a report of the operation and business of the road for the fiscal year ending June 30, 1874, together with comparative statement of the earnings and expenses of the previous year.

Matters in general.—The Southern Pacific Road in the San Joaquin Valley, leased to the Central Pacific, extends from Goshen to the north bank of the Kern River, distance $71\frac{3}{10}$ miles, of which $29\frac{8}{10}$ miles (from Delano to the latter point) were opened up for business August 1st, 1874. The bridge over the Kern River, it is expected, will be completed and trains running into Bakersfield, distant about $24\frac{4}{10}$ miles, as early as October 1st.

The average number of miles of road operated for the year ending June 30th, 1874, exclusive of the above, was 157.2/10.

The number of miles of road in operation August 1st, 1874, was as follows:

San Francisco to Soledad.....	142.1
Carnadero Junction to Tres Pinos.....	18
Goshen to terminus (north bank of Kern River).....	71.8
Total	232.9

The completion of the Salinas & Monterey R. R. (narrow gauge) is promised by the end of September. Work also has been commenced on the Santa Cruz & Watsonville R. R., connecting with your road at Pajaro. Both of these roads, it is believed, will prove to be quite valuable feeders.

All that was promised concerning the percentage of operating expenses has been more than fulfilled, and the earnings compared with previous years show a steady increase in both freight and passenger business, which we confidently believe will continue.

It is a source of satisfaction that the road has been operated during the year without accident to its passenger trains, all trains having

been run with great regularity and without loss of life or injury to passengers.

My acknowledgments are due to the officers, heads of the different departments, and to the employes for their cheerful cooperation in the successful management of the road.

Respectfully submitted.

A. N. TOWNE, *General Superintendent.*

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DEFENDANTS' EXHIBIT No. 23, MARCH 12, 1915.

(6. Report of the Southern Pacific Railroad Company for the year ending June 30, 1875.)

Annual report of the board of directors of the Southern Pacific Railroad Company to the stockholders for the fiscal year ending June 30th, 1875. San Francisco: H. S. Crocker & Co., stationers and printers. 1875.

Report.

OFFICE SOUTHERN PACIFIC RAILROAD COMPANY,
COR. FOURTH AND TOWNSEND STREETS,
San Francisco, October 1st, 1875.

To the stockholders:

The board of directors herewith submit the reports of subordinate officers, which give the operations of the road for the fiscal year ending June 30th, 1875, and the financial condition of the company at that date.

Since the last report the company has been reorganized and consolidated with the Los Angeles and San Pedro Railroad Company, under the name of the "Southern Pacific Railroad Company", December 18th, 1874.

Capital stock:

The capital stock of the new corporation authorized is.....	\$90,000,000
The amount of capital stock subscribed is.....	23,770,330
The amount of capital stock paid in is.....	22,412,200

Progress of construction.—Since the last report the Western Development Company, which has the contract for building the road, has completed sixty-four and one-half miles of road (up to August 1875), and which is now being operated by the company, as follows:

from Lerdo to Caliente.....	36 miles.
from Spadra to Colton.....	28½ miles.
	64½ miles.

Since August 8th, and up to the present writing (October 1st), the track has been laid from Colton to a point seven and one-half miles southerly and beyond San Gorgonio Pass, and twenty-nine miles beyond Colton. The grading is completed to a point 35 miles beyond San Gorgonio, and upon the arrival of rails via Cape Horn, now overdue, track laying will be resumed, and also the grading (which has been temporarily suspended), and the track will
 134 be pushed forward to the Colorado River, which can be reached by March next, if the company shall so decide.

Tehachapi Pass.—In the meantime the Western Development Company has been pushing the work of grading your road in the Tehachapi Pass—through the “Sierra Nevada” Mountains—with great energy. They have now employed twenty-nine hundred and sixty Chinese laborers, besides many hundred white as foremen, teamsters, carpenters, masons, and at other occupations, upon forty-three miles of heavy work in this pass. They have also fifteen hundred men employed upon the San Fernando Tunnel, which is proceeding rapidly to completion.

All this work is under the general superintendence of Mr. J. B. Harris, assisted by Mr. Arthur Brown, as superintendent of bridge and tunnel lining. Mr. Harris reports that this work will be advanced so as to permit the commencement of track laying at Caliente about March 1st, and continue on until the connection is made at San Fernando about July 1st next.

Length of road completed Oct. 1st, 1875, is as follows:

135	San Francisco to Tres Pinos.....	100.5
	Carnadero Junction to Soledad.....	60.4
	Goshen to Caliente.....	96.00
	San Fernando to 7 miles beyond San Gorgonio, via Los Angeles.....	107.5
	Los Angeles to Wilmington.....	22.5
	Total miles.....	386.90

Earnings and operating expenses.—The earnings and operating expenses for the year ending June 30th, 1875, were as follows:

Earnings:		
	Freight.....	\$741, 318. 25
	Passengers.....	617, 148. 70
	Express.....	21, 141. 17
	Lighterage, freight.....	44, 879. 88
	Lighterage, passenger.....	14, 488. 91
	Rental.....	315, 427. 45
	Storage.....	5, 191. 63
	Miscellaneous.....	3, 313. 42
	Mall.....	14, 277. 53
136	Telegraph.....	3, 269. 60
	Total earnings.....	\$1, 780, 458. 86

Operating expenses:

Expenses of superintendents.....	\$7, 197. 28
Station service.....	103, 146. 20
Train service.....	63, 214. 91
Locomotive service.....	149, 583. 52
Telegraph service.....	447. 22
Office expense.....	34, 473. 96
Stationery and printing.....	9, 556. 20
Advertising.....	1, 678. 72
Water service.....	7, 244. 92
Repairs of tools.....	6, 929. 00
Repairs of track.....	107, 074. 37
Repairs of buildings.....	8, 906. 83
Repairs of engines.....	48, 535. 84
Repairs of cars.....	41, 886. 01
Repairs of foreign cars.....	3, 356. 88
Repairs of bridges and culverts.....	6, 072. 74
Repairs of fences.....	3, 474. 65
Miscellaneous expense.....	2, 158. 14
Mail service.....	1, 497. 30
137 Loss and damage (property).....	4, 091. 20
Damages (personal).....	1, 167. 72
Wharf.....	16, 787. 62
Steamer and lighterage.....	21, 834. 20
Expense of leased roads.....	123, 100. 00
Total operating expenses.....	773, 485. 52
Net earnings.....	1, 006, 971. 02

J. L. WILLCUTT, *Secretary*.CHAS. J. ROBINSON, *Auditor*.

Details of repairs and equipment.—For full details of repairs, including cost of same and the running expenses, you are referred to the reports of A. C. Bassett, superintendent of Northern Division (see pages 9 to 20), and E. E. Hewitt, superintendent of Los Angeles Division (see pages 23 to 31).

The report of the secretary.—You are referred to the report of the secretary (see pages 35 to 39) for a full exhibit of the financial condition of the company up to the close of the year ending June 30th, 1875.

It is not deemed necessary at this time to make an extended exhibit of the future prospects of your company in this report, as a pamphlet giving "Description, progress, and business with reference to the financial condition of the company and the value of its first mortgage six per cent gold bonds" has been lately published by the financial agent of the company at New York, Mr. C. P. Huntington, and which is very full and complete.

A copy of this pamphlet will be forwarded to each stockholder.

CHAS. CROCKER, *President*.

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(7. Report of the Southern Pacific Railroad Company for the year ending June 30, 1876.)

OFFICE SOUTHERN PACIFIC R. R. CO. OF CALIFORNIA,
C. P. HUNTINGTON,
No. 9 NASSAU STREET,
New York, Sept. 25, 1876.

HON. Z. CHANDLER,
Secretary of the Interior, &c., &c.,
Washington, D. C.

SIR: I have the honor to hand you herewith the annual report of the Southern Pacific Rail Road Company (of California) for the year ending June 30, 1876. Please acknowledge receipt and oblige,
Yours, very respectfully,

C. P. HUNTINGTON, *Agt. & Atty.*
(G.)

140 Fourth. For a description of the lines of road surveyed reference is made to previous reports and the accompanying report of the chief engineer.

The cost of surveys has been paid by the contractors constructing the road.

(Copy.)

SAN FRANCISCO, Aug. 10th, 1876.

To the president and directors of the S. P. R. R. Co.:

I have the honor to submit the following as my report of the operations of the engineer's department for the fiscal year ending June 30th, 1876.

In our annual report for the year ending June 30th, 1875, it was stated "The road was completed from Sumner to Caliente, a distance of 16 miles", &c. Since that report the construction has progressed steadily from Caliente to San Fernando station, a distance of 124.4 miles.

On that portion of this division embracing the Tehachapi Pass from Caliente to Tehachapi Station, a distance of 25.4 miles, very heavy and expensive work in grading was encountered. The
141 location of this subdivision required careful study and sound judgment. It is on this part of the route where we resorted to a novel expedient to obtain distance and to accommodate the grades to the natural surface of the country.

This was accomplished by taking advantage of a nearly conical butte, circling round it, and then tunneling through a spur of the butte over which the line ran in making the circuit. The circuit is made in a lineal distance of $3,794\frac{7}{10}$ feet and a difference in elevation, where the line crosses itself, of $77\frac{5}{10}$ feet. Seventeen tunnels were necessary on this subdivision, having an aggregate length of $7,677\frac{1}{10}$ feet.

It is confidently believed, under all the circumstances, this location has been judiciously made and will stand the test of impartial criticism.

The track was laid and ready for the transportation of passengers, mails, and freights from Caliente to Tehachapi station on June 30th, 1876.

From Tehachapi Station to and including San Fernando Tunnel, a distance of $94\frac{2}{10}$ miles, the grading is well advanced. Three tunnels were necessary on this subdivision—two in the Soledad Canon, 142 of an aggregate length of 560 feet, and one in the San Fernando Pass, of $6,966\frac{1}{2}$ feet. It is anticipated this subdivision will be completed and an all-rail connection made between San Francisco and Los Angeles, on or before Sept. 15th, 1876.

There has been 5 miles graded and track laid between San Fernando Tunnel and San Fernando station. Trains commenced running carrying passengers, mails, and freights from the tunnel to San Fernando on Jan. 1st, 1876.

In our annual report before referred to it was stated "50 miles from Spadra to San Gorgonio had been graded and the track laid to Colton, and that a contract had been entered into to grade 50 miles from San Gorgonio to near Dos Palms, &c." Since that report the track has been laid from Colton to San Gorgonio, and thence to Indian Wells, in the Cabazon Valley, a total distance from Colton to Indian Wells of $71\frac{1}{2}$ miles.

Trains commenced running carrying passengers, mails, and freights on May 29th, 1876.

Indian Wells, the present terminal of the road, is one hundred and sixteen miles from Fort Yuma, on the Colorado River; the final location of this subdivision has been completed, and the line is now ready for the graders.

143 To recapitulate: There have been completed and brought into operation during the year ending June 30th, 1876, the following subdivisions of railroad and telegraph line, all of which is first class:

	Miles.
From Caliente to Tehachapi Station.....	24. 40
" San Fernando Tunnel to San Fernando.....	5. 00
" Colton to Indian Wells.....	71. 50
Total miles.....	100. 90

Of this distance of 100 90/100 miles there was laid 29 36/100 miles of iron weighing 56 lbs. per lineal yard and 71 54/100 miles of steel rails weighing 50 lbs. per lineal yard.

There has been about 850 miles of line instrumentally surveyed during the year besides many side trial lines, of which no account is here made.

This company have in operation transporting passengers, mails, and freights the following miles of railroad:

	Miles.
From San Francisco to Tres Pinos.....	100.50
" Carnadero to Soledad.....	60.40
" Goshen to Tehachapi Station.....	121.00
" San Fernando Tunnel to Indian Wells.....	155.20
" Los Angeles to Wilmington.....	22.25
Total	459.35

144 Extended reconnaissances were made during the year, principally under the charge (in the field) of Isaac W. Smith, Esq., commencing at the terminus of completed road, and thence into Nevada, Arizona & New Mexico, to El Paso, on the Rio Grande.

The first examination was made from Dos Palms in Cabazon Valley, thence to Ehrenberg, on the Colorado River, and thence to Phoenix, on Salt River, just above the junction of this river, with the Gila in Arizona, a distance of about 245 miles.

The information obtained demonstrated it would require a careful instrumental survey to decide the practicability of this route, an instrumental survey is now in progress and will be completed in a few days.

A reconnaissance was made from Los Angeles to San Diego, thence via the different passes through the mountain range lying north and eastward from San Diego, thence to the plains between the mountains and Fort Yuma, all of which has been heretofore reported upon.

An extended reconnaissance was made starting near Camp Cody on the Mojave River, thence to Soda Lake, Ivanport, Los Vegas, 145 the Amargoza Valley, Collville, and the Rio Virgen River.

Further examinations in the above directions are desirable.

The reconnaissance from Dos Palms to the junction of the Salt and Gila Rivers was continued from Phoenix to Tucson, Railroad Pass, Camp Bowie to El Paso, and Franklin on the Rio Grande, a distance of 408 3/4 miles. The distance from Indian Wells, the end of the completed road, to El Paso will be about 675 miles. A very favorable route for a railroad was found from the Colorado River to the Rio Grande River with generally easy grades and inexpensive construction if properly located.

Respectfully submitted.

GEO. E. GRAY, *Chief Engineer.*

(8. Report of the Southern Pacific Railroad Company for the year ending June 30, 1877.)

OFFICE SOUTHERN PACIFIC R. R. CO. OF CALIFORNIA,

C. P. HUNTINGTON, AGT. & ATTY.,

NO. 9 NASSAU STREET,

New York, Sept. 29, 1877.

HON. CARL SCHUZ,

Secretary of the Interior, &c., &c.,

Washington, D. C.

SIR: I have the honor to hand you herewith the annual report of the Southern Pacific Rail Road Company (of California) for the year ending June 30th, 1877, which is submitted in accordance with an act of Congress entitled "An act relative to filing reports of rail road companies", approved June 25th, 1868, the receipt of which I will thank you to acknowledge.

Very respectfully, your obedient servant,

C. P. HUNTINGTON, *Agent & Atty.*

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147 Fourth. For a description of the lines of road surveyed and of the lines thereof fixed upon for the construction of the road reference is made to previous reports and the accompanying copy of the report of the chief engineer. The cost of surveys has been paid by the contractors constructing the road.

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SAN FRANCISCO, *July 3rd, 1877.*

To the president and directors of the Southern Pacific Railroad:

I have the honor to submit the following account of surveys made by the engineer's department and the additional miles of railroad constructed for the fiscal year ending June 30, 1877.

In our annual report ending June 30, 1876, it was then stated: "The railroad was completed from Caliente to Tehachapi Station and from San Fernando Station to San Fernando Tunnel, and
148 from Colton to Indian Wells (since called Indio, a total distance of 100 9/10 miles, and considerable advancement had been made in grading on other portions of the line." Since that report the construction has steadily progressed.

Grading and track laying was completed from Tehachapi to Mojave, a distance of 20 2/10 miles (and trains commenced running, conveying U. S. mails, passengers, and freights), August 8, 1876.

From Mojave to and including San Fernando tunnel the grading and track laying for a distance of 75 00/100 miles was completed,

and trains commenced running, conveying U. S. mails, passengers and freights, September 6, 1877.

Grading and track laying commenced at Goshen Mar. 1st, 1877 and was completed to Huron, a distance of 40 miles, Jan. 9, 1877. Trains commenced running, conveying U. S. mails, passengers, and freights, Feby. 1st, 1877.

January 1st, 1877, grading and track laying commenced at Indio (formerly called Indian Wells), and was completed to the Colorado River near Yuma, a distance of 118 $\frac{3}{10}$ miles, on the 20th of May, 1877, and trains commenced running, conveying U. S. mails, passengers, and freights, on the 23d of May, 1877.

149 To recapitulate, there has been constructed and brought in operation during the fiscal year ending June 30th the following portions of railroad and telegraph line, all of which is first class:

From Tehachapi to Mojave-----	Miles 20
From Mojave to and including San Fernando tunnel-----	75
From Goshen to Huron-----	40
From Indio to Colorado River near Yuma-----	118
Total completed-----	253

Of this distance of 253.78 miles the whole has been laid with steel rails, weighing not less than 50 lbs. per lineal yard.

This company now have in operation carrying U. S. mails, passengers, freights, etc., the following miles of railroad and telegraph lines, viz:

From San Francisco to Tres Pinos-----	Miles 100
From Carnadero to Soledad-----	0
From Huron via Goshen and Los Angeles to the Colorado River near Yuma-----	52
(x) From Los Angeles to Wilmington (new depot)-----	2
Total in operation-----	71

150 (x) This distance includes the "Y" at Goshen, 0.28/100 miles.

The location of the bridge to cross the Colorado River has been fixed upon, and the materials for the same are now being rapidly delivered for its erection. It is intended to have the bridge completed by Sept. 1st next.

The bridge will be all of wood, will have a draw of 80 feet the clear, opening placed on a turn-table. There will be five openings (fixed) of 80 feet each resting on piled piers, driven to rock underlying the bed of the river.

Grading for depot grounds, engine house, and general station purposes are in progress at Yuma, and will be completed on or before the completion of the bridge.

There has been 650 miles of instrumental and experimental lines run in addition to final locations, during the fiscal year, besides a large extent of country examined barometrically east of the Colorado River, the latter having been the subject for special reports.

Respectfully submitted,

(Sgd.)

GEO. E. GRAY, *Chief Engineer.*

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DEFENDANTS' EXHIBIT No. 23, MARCH 12, 1915.

(9. Report of the Central Pacific Railroad Company for the year ending June 30, 1873.)

OFFICE CENTRAL PACIFIC R. R. Co.,

C. P. HUNTINGTON, V. P.,

NO. 9 NASSAU STREET,

New York, September 23, 1873.

Hon. C. DELANO,

Secretary of the Interior, Washington, D. C.

SIR: I have the honor to hand you herewith the "Annual report of the Central Pacific Railroad Company of California", and the "Western Pacific Railroad Company" and the "California and Oregon Railroad Company" and the "San Francisco and Oakland Railroad Company" and the "San Francisco and Alameda Railroad Company", consolidated under the name of the "Central Pacific Railroad Company", for the year ending June 30, 1873, and will thank you to acknowledge receipt of same.

Very respectfully,

C. P. HUNTINGTON, *Vice President.*

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Annual report of the board of directors of the Central Pacific Railroad Company to the stockholders for the year ending December 31st, 1872. Sacramento: Record Book and Job Printing House. 1873.

Report.

OFFICE CENTRAL PACIFIC RAILROAD CO.,

Sacramento, July 8th, 1873.

The directors herewith submit to the annual meeting of the stockholders of the Central Pacific Railroad Company such reports of

subordinate officers as will give a general resumé of the operations of the road from its commencement up to the 1st of this month, and a particular account of the condition of the company's property and financial condition up to December 31st, 1872.

Your careful attention to these reports is invited.

The capital stock authorized is.....	\$100,000,000.00
The capital stock subscribed is.....	59,644,000.00
The capital stock paid in is.....	54,283,190.00
153 Of the amount subscribed there is held in trust for the company.....	5,333,300.00

Indebtedness.—The debts of the company are:

Funded debt.....	54,084,000.00
Less sinking fund.....	878,847.00
	53,205,153.00
United States subsidy bonds.....	27,855,680.00
Total.....	81,060,833.00

For detailed statement of funded debt see secretary's report, hereto appended, Table No. 2.

Assets.—The assets of the company are:

1,222 miles main line of railroad and telegraph, with all necessary sidings, turnouts, switches, turntables, depots, depot buildings, roundhouses, and snow galleries, also wharves, slips, piers, and steamers for ferries at San Francisco (cost).....	\$130,485,678.74
Equipments for same—Locomotives, cars, snowplows, etc. (cost).....	5,622,003.00
Real estate purchased for use of road (cost).....	968,976.00
154 Shops and machinery (cost).....	1,280,223.25
Telegraph instruments, furniture, safes, etc., at stations and offices (cost).....	76,602.00
Sacramento River steamers (cost).....	850,372.00
Material on hand:	
In shops for constructing and repairs (per inventory) (cost).....	985,283.25
In store of supply department (per inventory) (cost).....	112,769.25
Fuel on hand (per inventory) (cost).....	325,048.25
Balance of accounts outstanding after deducting obligations.....	2,366,130.00
Farming lands—estimated value.....	29,306,000.00
Undivided half 60 acres land in Mission Bay, in San Francisco; 500 acres water front at Oakland; about 140 acres and water front at Sacramento—estimated value, independent of improvements.....	7,750,000.00
Cash in hands of treasurer.....	147,156.00
Total.....	180,257,024.00

Length of road.—The following statement shows the length of the main line and branches December 31st, 1872:

Division.	Terminal.	Length (miles).
Main Line.....	San Francisco to Junction with U. P. R. R.	883
Oregon Division.....	Roseville to Redding.....	152
San Joaquin Division.....	Lathrop to Goshen.....	146
San Jose Division.....	Niles to San Jose.....	18
Alameda Division.....	Alameda to Haywards.....	17
Oakland.....	Oakland to Brooklyn.....	6
Total.....		1,222

The length of side tracks is $110\frac{4}{100}$ miles, equivalent to an aggregate of $1,332\frac{4}{100}$ miles single-track road:

Statement of equipment, Dec. 31, 1872.

Locomotives.....	184	Platform cars.....	1,494
First-class passenger cars.....	93	Section cars.....	179
Second-class passenger cars.....	54	Hand cars.....	222
Palace sleeping cars.....	21	Dump cars.....	110
Mail and express cars.....	15	Track-laying cars.....	51
Baggage cars.....	25	156 Directors and superintendents' cars.....	2
Boat cars.....	38	Wrecking cars.....	2
Day cars.....	1	Snow plows.....	7
Box freight cars.....	1,704	Wrecking cars.....	2
Directors and superintendents' cars.....	2	Snow plows.....	7

In the Sacramento shops there have been, in addition to the above, four hundred and thirty-seven cars built since January 1st, 1873; three locomotives, and seven now building and nearly completed. The Miller platform has been put on all the passenger cars, and passenger trains are equipped with the Westinghouse air brakes.

Shops.—There are complete and extensive shops for the construction and repair of locomotives and cars, fully equipped with most approved machinery for that purpose, located at Sacramento (within the city limits), on large and commodious grounds belonging to the company; and also division repair shops, located at San Francisco, Oakland, Lathrop, Rocklin, Truckee, Wadsworth, Winnemucca, Carson, Toano, Terrace, and Ogden. These shops and the machinery have been largely added to during the year.

Far removed as we are from manufacturing centers, shops complete for the manufacture of cars and locomotives are a necessity, which justifies the liberal expenditure above noted, of \$1,280,223.25, made for that purpose, and the large amount of material necessarily kept on hand, at a cost of \$1,098,052.47.

San Francisco ferries to and from Oakland and Alameda.—The equipment of these ferries is composed of the following steamboats:

Name of steamer.	Tonnage.	Number, kind, and size of engines.			
		No.	Kind.	Inches.	Foot and inches.
El Capitan.....	982	1	Condensing, beam.....	36	12
Alameda.....	813	1	Condensing, beam.....	42	10
Oakland.....	285	2	Noncondensing, slide valve	20	4
Washoe.....	580	2	Noncondensing, lever.....	22	7
Thoroughfare.....	1, 012	2	Noncondensing, lever.....	22	7
Louise.....	386	1	Condensing.....	40	8
Flora Temple.....	334	1	Noncondensing.....	16	8

With wharves, piers, and slips for their accommodation. One of these steamers, the Thoroughfare, is a large, powerful boat, designed exclusively for transportation of freight trains between Oakland and San Francisco, with track capacity for eighteen cars, besides additional room and pens for sixteen carloads of stock. It is a most decided success, and determines the question of manner of approach to the city of San Francisco.

River steamboats.

Name of steamer.	Tonnage.	Number, kind, and size of engines.			
		No.	Kind.	Inches.	Foot and inches.
Amador.....	897	2	High pressure.....	25	7
Amelia.....	386	1	do.....	36	6
Capital.....	1, 625	1	Low pressure.....	65	12
Cornelia.....	383	1	do.....	27	6
Cora.....	298	2	High pressure.....	20	5
Chrysopolis.....	1, 080	1	Low pressure.....	60	12
Chin-du-Wan.....	181	2	High pressure.....	18	5
Dover.....	164	2	do.....	14	6
Empire City.....	102	2	do.....	12	10
Enterprise.....	246	2	do.....	15	8
Flora.....	225	2	do.....	14	10
Fresno.....	33	2	do.....	8 $\frac{1}{2}$	12
Gem.....	235	2	do.....	15 $\frac{1}{2}$	8
Gov. Dana.....	300	2	do.....	15 $\frac{1}{2}$	6
Goodman Castle.....	160	2	do.....	14 $\frac{1}{2}$	8
Julia.....	520	2	do.....	20	8
159 Lark.....	271	2	do.....	16	8
Mary Emma.....	48	2	do.....	9	12
Moulton.....	294	2	do.....	14	8
Paul Pry.....	331	2	do.....	18	6
Pilot.....	165	2	do.....	12	8
Red Bluff.....	249	2	do.....	15 $\frac{1}{2}$	8
Reliance.....	227	1	do.....	24	8
Sacramento.....	541	2	do.....	20	8
Tulare.....	122	2	do.....	12	6
T. C. Walker.....	137	2	do.....	14	6
Vallejo.....	273	2	do.....	16	8
Washington.....	148	2	do.....	12	8
Yosemite.....	1, 272	1	Low pressure.....	56	10

List of barges.

Name.	Tonnage carrying capacity.	Name.	Tonnage carrying capacity.
Antonio.....	500	160 Jacinto.....	800
of Spades.....	700	Chico.....	600
of Clubs.....	250	Tehama.....	600
.....	250	Orient.....	250
.....	800	Grant.....	200
.....	250	Dr. Franklin.....	250
.....	200	Paradise.....	200
.....	450	Cattle Barge.....	100
.....	400	Sybil.....	150
.....	400	Napa.....	250

The railroad hospital.—Located in the city of Sacramento, on ample grounds, is a large and commodious building, built by the company in 1869.

It is under the able administration of Dr. A. B. Nixon, and has fully realized the expectation of its founders.

Every officer and employee of the company contributes monthly fifty cents from his pay, as "hospital dues," which constitutes a hospital fund to defray the current expenses of the institution. The payment of this monthly hospital due entitles the employee to free admission and medical attendance at the hospital in case of sickness or injury while in the service of the company.

Thus far the fund from this source has been sufficient to defray the current expenses of the hospital and pay the interest on its debt. There is no reason to doubt it will continue to be self-sustaining.

The building of this asylum has proved a humane provision against the improvidence too frequent among men, and is regarded with favor among employees, tending to attach them to the service of the company.

The actual cost of real estate purchased for railroad terminal and station purposes on the line of your road is \$968,976.06.

Its real value at this time is very much more, as it has been largely enhanced since it was acquired, and from natural causes its value will continue to increase.

These locations and purchases were made with reference to the future wants, no less than the present need, of your company, and are believed to be ample to meet all the requirements of its increasing business for many years to come.

There have been important improvements made at the joint cost of the Central Pacific and Southern Pacific Railroad Companies of \$52,224. upon the sixty-acre tract of land granted to these com-

panies by the State, at Mission Bay, in the city of San Francisco. Further improvement is deemed unnecessary there until a proper ordinance shall be passed by the city authorities closing certain

streets and allowing the cars to reach deep water, which, we understand, the city is now willing to do. At your next annual

meeting we hope to be able to report that the necessary concessions have been made and that the track has been extended to deep water, so as to bring the cars and ships together at that point.

At the city of Oakland you have 288 acres most advantageously located, besides 500 acres of water front opposite the city of San Francisco, from which a pier has been constructed to ship's channel that amply meets the present wants of commerce at that point. One hundred and fifteen ships have taken full cargoes of wheat at this pier for foreign ports since the last harvest.

At the city of Sacramento your company was granted 2,800 feet of water front in the most central business part of the town. This grant was confirmed by act of the legislature in 1863. It has since been improved by the construction of docks and tracks covering the entire length; with three stationary engines, derricks, and other needful appliances for the rapid and economical discharge of merchandise and heavy weights to and from cars and water craft. As a business facility, in the interest of the increasing commerce centering at this point, it is exceedingly valuable. In addition to this

water-front property, your company owns a connected tract of about 140 acres, conveniently situated within the city limits, on a portion of which its principal shops are located.

At every station on the entire length of your road ample room has been acquired for railroad purposes.

The right of way acquired from the National Government is four hundred feet in width and that derived from individual landowners as far as practicable, is of the same width.

The land grant from the United States Government to the Central Pacific Railroad of 12,800 acres per mile for 742 miles is

	9,497,600 acres
Deduct for lands previously granted and reserved, say	1,500,000 acres

Leaves	7,997,600 acres
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The land grant to the California and Oregon Railroad of 12,800 acres per mile for 291 miles is	3,724,800 acres
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Total	11,722,400 acres
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(The grant to the C. & O. R. R. Co. provides that where lands are lost to the railroad company by reason of previous grants or reservations they can be made good from an indemnity grant of ten miles in extent on either side of the twenty-mile limit, which insures to the railroad company the full amount of land granted.)

The value of these lands at the Government minimum price for adjoining lands, \$2.50 per acre, would be

\$29,300,000

Much of this is the choicest agricultural and timbered land in the country, and will sell for a much larger price.

The policy of the company has been to sell its farming lands at low prices and on easy terms of payment to actual settlers, believing the best interests of the company are promoted by selling in limited quantities within twenty miles of its road to those who will cultivate the soil and who will own the soil they cultivate. By this means we create an industrious agricultural population, whose improvements and production tend to increase the business of your road and to enhance the value of your unsold lands. Most of the lands that have been sold were purchased for gold on a credit of five years, a payment of twenty per cent being made at the time of sale and the remainder in equal annual installments, with annual interest at the rate of ten per cent per annum, payable in advance, on all sums remaining unpaid.

Of these lands there were sold previous to October 1st, 1870, 27,635^{5.5}/₁₀₀ acres, which brought the sum of \$295,065.50, being an average of \$2.21 per acre.

From October 1, 1870, to December 31, 1872, there was sold 22,765 acres, which brought the sum of \$484,227.97, being an average of \$3.93 per acre.

From December 31, 1872, to June 30, 1873, there was sold 20,638^{7.1}/₁₀₀ acres, which brought the sum of \$132,337.54, being an average of \$6.41 per acre.

These sales were made to 1,446 individual purchasers, being an average of about 187 acres to each buyer.

This annual advance in the average price of lands sold indicates the increasing value of the unsold lands of your company, and when viewed in connection with the annual increase of the business of your road, fully justifies the policy of selling, as far as practicable, to the actual settler for cultivation.

The active competition with the California Pacific Railroad Company for the traffic between Sacramento and San Francisco, which existed in 1871, was terminated by mutual agreement between that company and your own, by which the Central Pacific guaranteed the payment of 1,600 of the twenty-year six per cent mortgage bonds of the California Pacific Railroad Company, for \$1,000 each, which arrangement has proved highly advantageous to your company in a financial point of view.

Since the construction of your road to a junction with the Union Pacific at Ogden, there has been added to it by construction and consolidation, 480 miles, viz: Western division, 141 miles; Oregon division, 152 miles; San Joaquin, 146 miles; San Jose, 18 miles; Alameda, 17 miles; Oakland, 6 miles. All these additions to the main line have proven at once profitable investments, adding to and with

themselves increasing the pro rata earnings and net income of each mile of the whole.

These additions, like the stem line, have mostly penetrated a sparsely settled and undeveloped country, but of vast resources, and together they may be said to command the entire scope of the San Joaquin and Sacramento Valleys, and all the country, in fact, whose business shall seek the Pacific. The Sacramento and San Joaquin Valleys—the two great valleys of California—alone comprise an area of 480 miles in length by an average of 70 miles in breadth, or
167 21,504,000 acres of arable land, susceptible of varied and most profitable cultivation, which must bring a very large traffic to your road as soon as they shall be brought into culture, and which is confidently expected in the near future.

From the valley of the Sacramento to Ogden the Truckee and the Humboldt Rivers alone offer a practicable pass through the ranges of mountains that occupy so largely the country from the Wahsatch to the Sierra Nevada, lying parallel to them and running north and south. The natural and only drainage of all that vast country for hundreds of miles north and south is to the lines of your road, and it is the same with the drainage of the great valley system of California. Your lines are so laid with reference to the topography and passes of the country that these valleys and their tributaries are completely commanded, and hereafter the construction of all lines of railroads in this vast country of hundreds of thousands of square miles must prove feeders to your lines.

It is not too much to assume that no railroad system in the world is so comprehensive as this, which nature has pointed out, and
168 of which your company has been so fortunate as to secure and develop. It is the very key to the commerce of the Pacific.

The results of the operations of your roads for the year 1872 are more than satisfactory; they are conclusive of preeminent financial success. Though your lines command this vast country so rich in mineral, agricultural, and manufacturing resources and of great commercial advantages, it is but sparsely occupied and but slightly developed, and your roads only fairly opened for business. Your interest account necessarily is large, consequent upon the cost of your roads.

The natural difficulties to be overcome upon the main line were immense. During the period when that work was being performed the War of the Rebellion was raging. Material was at war prices. The bonds received from the Government, as well as your own mortgage bonds, were sold for currency which had to be converted into gold at a great sacrifice. Yet the year 1872 shows the ability of your roads to take care of themselves and pay interest with a handsome balance over. With the population and development that is certain

in the future, the annual increase of business for years to come will continue; as the causes remain, but with growing force, great financial success therefore is assured.

On the original line from Sacramento to Ogden, as well as upon the other parts, large expenditures have been made in perfecting them since they were opened for business, until now they are in such a state of completeness as to tracks, depots, machinery, snow galleries, docks, wharves, and terminal accommodations and supplies on hand that you may reasonably expect dividends upon your shares from this time on. Heretofore the net earnings have gone to construct and bring your property to its present state of completeness and effectiveness.

At the present time the question of control of railroads is somewhat agitated. Congress in the Pacific Railroad act, section 18, says: "And be it further enacted, That whenever it appears that the net earnings of the entire road and telegraph, including the amount allowed for services rendered for the United States, deducting all expenditures, including repairs and the furnishing, running, and managing of said road, shall exceed ten per centum upon its cost (exclusive of the five per centum to be paid to the United States), Congress may reduce the rates of fare thereon, if unreasonable in amount, and may fix and establish the same by law." This takes the control of freights and fares on the Pacific railroads from the States and Territories through and into which they run, and leaves the question entirely with Congress, in accordance with the section above quoted. The principle embraced in the act of Congress, that the companies are to control their business unmolested, in any event, until a fair return is had upon their investment, must prevail for all railroads.

Ownership and control must be inseparable. If the owners in a business are not to control, but its management and control to be by those who do not own, then that business cannot be prosecuted.

But the necessities of the case and the sense of justice will establish it as a principle that ownership and control in railroad matters, as in other legitimate business, must go together.

During the past year much has been said about the relations of your road to the Government. Your board of directors are much pleased to be able to state that the company has more than fulfilled every obligation arising out of its contract with the Government, and has saved to the Government, by its rapid construction and consequent opening for business (seven years earlier than its contract required), more millions than the company netted in gold from the bonds received from the Government. All the additions are consolidated with the main line, and are equally

with it security to the Government for its loan, and these additions are and will ever be more valuable per mile than the greater part of the main line.

To confound the ignorant or malicious calumniators of your company you can point to the record of what you have done and to the contract under which you did it. By the contract you will abide and by it be judged, asking no favors, only justice; but if the equities are to govern you can well afford to go into an accounting of mutual benefits and stand by the balance sheet.

To give to the Government and the country the benefits of your road seven years earlier than the contract required cost your company probably not less than ten (10) millions of dollars more than it would have cost had the full time been taken for construction which the contract allowed. One of the reasons for the sacrifice to secure rapid construction was the absolute necessity of reaching the Great Salt Lake Valley in time to meet the Union Pacific there,

that we might command the business to that point and to the north and south of the line and secure the fair advantages of the expensive work of the "Sierras." Almost any sacrifice was justified by this consideration, but the Government and the country have none the less the benefit of the sacrifice. And even your company, besides having secured the advantage consequent upon making the junction with the Union Pacific at Ogden in the Great Salt Lake Valley is in great measure compensated by having the benefits arising from the use of the road so early and the development of business so much in advance of what otherwise would be the case. But no one could at that time foresee the great development of local business consequent upon the construction of your roads in the then unoccupied country between the valley of the Truckee and that of Salt Lake. It is a suggestive fact that between these valleys a distance of nearly six hundred miles, where now there is a business such as demands lateral lines of railroads for its accommodation there lived at the time when your road was commenced but one white man. The reports of other roads, so far as they have come to our knowledge, show no such wonderful increase of business yearly as you will perceive, has been made by your roads. But we can not clearly see that they will be greater in the future.

173 The immigration this year promises to be more than double that of any year since the junction of the roads at Ogden.

The wealth of our soil, as exhibited in its great wool, grain, and vine productions, and the advantages of climate are attracting attention that must each year largely increase the flow of immigration.

The trade of the Pacific Ocean, centering at the bay of San Francisco, shows a remarkable growth, and is a foretaste of the great business that is to come from the exchange of productions with

...ing millions of the islands of the Pacific Ocean and the coun-
tries bordering upon it.

Altogether the prospects of your company are bright, and you
have the satisfaction of knowing at the same time you have per-
formed a most beneficent work in opening up to settlement a country
otherwise in great part inaccessible for development.

LELAND STANFORD, *President.*

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Chief Engineer's Report, S. S. Montague.

Report of the Chief Engineer.

ENGINEER'S OFFICE, C. P. R. R.,

Sacramento, July 1, 1873.

To the President and Directors of the Central Pacific Railroad:

GENTLEMEN: In presenting a general report of the progress of sur-
veys and construction and of the present condition of your road it
will, I presume, be unnecessary to trace in detail the history of the
work from its inception, as most matters of interest in this connec-
tion have from time to time been placed before you.

The most important works undertaken by your company since the
connection of the main line with the Union Pacific Railroad have
been confined to the State of California, and have been designed as
a part of a general railroad system comprehending in its plan the
development of the great interior valleys of the State, and pro-
viding suitable means of communication between them and
the most eligible point for the connection of inland and ocean
commerce.

In furtherance of this plan the construction of the Western Pa-
cific had been commenced previous to the completion of the track on
the main line and the connection of the Central Pacific and Union
Pacific roads, and was opened for traffic in the fall of 1869, thus
forming an unbroken line from Omaha to San Francisco Bay.

Simultaneously with the construction of the Western Pacific,
work was commenced on the extension of the California and Oregon
railroad. This road was in operation previous to 1868 to a point
about seven miles south of Marysville, and it was pushed rapidly
forward to the town of Redding, Shasta County, one hundred and
twenty miles from Sacramento, and, by the line of our preliminary
survey, one hundred and thirty-nine miles from the northern
boundary of the State.

The construction of the road thus far, through the counties of
Placer, Sutter, Yuba, Butte, Tehama, and Shasta, has developed
some of the best agricultural lands of the State, and will render

productive a large region heretofore uncultivated and unpopulated for want of facilities for transporting grain and other products to market.

176 The certainty of the grain crop, in the northern part of the valley especially, will always render farming lands there very desirable, and the appreciation of real property since the construction of the road is ample evidence that its advantages are not overlooked by those seeking investments in that direction.

The fine grazing region in the northern part of this State and southern Oregon is already being occupied, and the products of these large districts, when fully stocked with sheep and cattle, may find an outlet to a market over your line. Added to this may be mentioned the business of the thrifty mining and agricultural population of Siskiyou and adjoining counties, and the transportation of lumber from some of the best pineries in the State. Large deposits of marble and iron are known to exist in convenient proximity to the line, which will undoubtedly be worked with profit at an early day. Valuable deposits of coal have already been discovered in Shasta County, but have not yet been worked extensively, and similar discoveries have been reported in the adjoining counties on the north.

The connection of this line with the Oregon and California Railroad, or its construction as an independent line to the Columbia River, will make this one of the most important routes of travel on the Pacific coast, and will be sought not only by the business community, but by tourists, to whom it will open up some of the most interesting fields for pleasure and observation that have yet attracted their attention.

Not less important than the California and Oregon is the Joaquin Valley Railroad, forming the great southern, as the former does the northern, arm of the system.

Both of these roads, since their commencement, have been commended with and are now known, respectively, as the Oregon and Joaquin divisions of the Central Pacific Railroad. The latter, diverging from the main line at Lathrop, runs southeasterly in a nearly direct line for a distance of one hundred and forty-six miles to Astoria, where it connects with the Southern Pacific Railroad, which has already been constructed from this point to Delano, a distance of forty-one miles further south, and is ultimately, as I understand, to be extended southerly through the State to the Colorado River, thus forming an important feeder to this part of your road, making, in fact, a link in the great southern transcontinental route,

178 must eventually find its most eligible terminus at San Francisco Bay. In view of its importance in this respect, and as with regard to the heavy local traffic which must result from the development of the agricultural resources of this valley, the road

been constructed upon a maximum grade of ten and one-half feet per mile ascending and with a grade of but five and one-fourth feet per mile against freight descending the valley. The alignment is also very favorable, the total curvature after leaving Lathrop being, in a distance of one hundred and forty-six miles, but two hundred and fifty-five degrees, with a minimum radius of five thousand seven hundred and thirty feet.

This great valley, extending from the confluence of the San Joaquin and Sacramento Rivers, southeasterly for a distance of two hundred and forty miles, with a width of from sixty to seventy miles, nearly all susceptible of cultivation, is as yet sparsely populated, though the large grain shipments from the comparatively small area under cultivation fully attest its value as a grain-producing region.

With the completion of the system of irrigation already in contemplation by resident and foreign capitalists, and for which the topography of the country is admirably adapted, the population of this valley must rapidly increase; and when this is accomplished its productive capacity can hardly be overestimated.

Work has already been commenced on one of the principal irrigating canals, and it is confidently expected that more extensive operations will soon be inaugurated, looking to the speedy development of a large area, now comparatively useless except for grazing purposes.

The general business anticipated upon this, as well as upon the Oregon Division of your road, has thus far been more than realized; and although these lines now command the greater portion of the business of the mining districts of the Sierra Nevada, as they do the business of the valley, it is thought that the construction of lateral lines may at many points be made remunerative, tending to develop local enterprises which are now languishing for lack of a cheap and expeditious means of communication with the main lines leading to the seaboard.

The vast forests of pine and other valuable timber which abound in many parts of the Sierra Nevada; valuable ore deposits undeveloped or but indifferently worked, for the reasons just mentioned; and towns that were once the centers of busy mining districts are waiting for this communication with the valleys and coast, and promise remunerative returns when it shall be provided.

The topography of California and the country lying between the Sierra Nevada and Wahsatch Mountains is such that the business of the country must naturally flow towards, and find its outlet over, your road; in fact, can not avoid centering upon your line. Hence the construction of lateral roads in this country must necessarily become feeders to your own.

The Virginia and Truckee Railroad, connecting with the Central Pacific at Reno, is an important illustration, and the impulse in construction has given to business in Virginia, Gold Hill, and vicinity warrants the belief that many similar enterprises will soon be inaugurated in Nevada and elsewhere. Surveys are already being made for a railroad from Elko to Eureka, White Pine, Pioche, and other important mining districts. The Utah Northern and Utah Central roads, extending north and south, respectively, through the fertile and populous valleys of Bear River and Great Salt Lake both form important connections with, and already bring a large amount of business to, your line.

The construction of the San Pablo and Tulare Railroad 181 which is already graded from Fassett (on the Central Pacific Railroad) to Antioch, will place you in connection with the roads leading to the Mount Diablo Coal Mines, and will enable you to receive and distribute coal for use on the road at much less than the present cost, and its distribution for use throughout the State must make this an important item for local freight.

Location and construction.—The history of the location of the Central Pacific Railroad across the Sierra Nevada, and thence to the Lake Valley, having been referred to in detail in former reports, is, I presume, unnecessary to repeat it here.

The heavy grades and sharp curves necessarily adopted in locating a railroad line across this formidable range, of course render its construction very expensive, though not more so than was anticipated.

In the construction of the road it has been the aim to bring it to the standard of the first-class roads of the country. Embankments and excavations have been made of ample width, and the road is well balanced. Where the material composing the roadbed was not suitable for this purpose it has been transported from 182 most available localities, though in some cases it has been found necessary to haul long distances.

On the mountain divisions, as well as elsewhere, where stone could be procured, all culverts and bridge piers have been built of stone material, but in the valleys it has generally been found necessary to substitute wood for structures. In such cases, whenever it could be obtained, redwood or cedar has been used.

The redwood, so well known on this coast, closely resembles cedar in appearance, and fully equals it in durability. It has been used almost exclusively for ties on the valley roads, as well as for such portions of trestle and culvert work as are most exposed to decay.

For bridges and the superstructure of trestlework on the valley roads, Puget Sound pine has been used almost exclusively, and

purposes where rigidity and strength are both essential qualities it has no superior among American woods.

Owing to the periodical rise and overflow of the principal streams in the Sacramento and San Joaquin Valleys, it has been found necessary to introduce trestlework or piling for the approaches to many of the principal bridges, where otherwise embankments would not only have been more desirable, but would also have been cheaper, and the circumstances which required the construction will also require the maintenance of this work or its replacement with some more durable material. This, however, is not an immediate necessity, as the present structures may generally be depended on for several years without extensive repairs.

Your road first reached San Francisco Bay by a connection with the San Francisco and Oakland and San Francisco and Alameda Railroads, since consolidated with the Central Pacific Railroad.

The wharves in use by those roads had been built with a view to the accommodation of the Oakland and Alameda ferry business, and were extended only to a depth of water sufficient to meet the boats used upon those lines. Extensive additions were at once made to the Alameda Wharf for the temporary accommodation of the overland and interior freight, which was discharged there upon lighters, towed across the bay, and delivered to consignees at the Second and King Street Wharf, at which point freight for shipment on the road was also received, thus making San Francisco, practically, the terminus of the overland road as soon as the rails were laid to the eastern shore of the bay.

With the constantly increasing overland as well as local freight the necessity for some more expeditious method of handling it soon became apparent, and the steamer *Oakland* was accordingly fitted up as a car-ferry boat, carrying five loaded cars; and suitable slips being provided at Alameda and Second Street Wharves, freight was thus landed in San Francisco with but little delay and without breaking bulk.

Meantime, work had been commenced at Oakland Wharf with the view of extending it to ship's channel and providing suitable slips for the reception of the largest sea-going vessels, as well as for the boats in the regular passenger and freight ferry service.

The length of this wharf when it came into the possession of your company was about 6,900 feet, with a width sufficient for a railroad track and a roadway for teams, having at the terminus a single slip for the ferryboat *El Capitan*.

The plan adopted for its extension consisted of a new track for the main overland line, connecting with the old wharf about 4,000 feet from the Oakland shore and running parallel with the same to its terminus; and thence the extension of the wharf for a dis-

185 tance of about 4,200 feet, with a width sufficient for three parallel tracks and a roadway for teams; the construction of three slips, one for the passenger boat *El Capitan*, one for a new car-ferry boat, and one of sufficient capacity to hold four large ships, with warehouses alongside for the temporary storage of grain when vessels were not at hand to receive it. Outside of these slips there is an available frontage on either side of more than four thousand feet, where vessels lie with convenience and safety.

Extensive passenger depots were also provided for, and every arrangement made for the rapid transshipment of passengers and freight.

A new freight ferryboat with a capacity for eighteen loaded cars and additional room for sixteen carloads of loose stock was built and ready for use as soon as the new wharf was completed, in January, 1871, since which time all of the freight and passenger business of the company's roads has been concentrated at this point. Recent extensive additions have been made for the reception and storage of

lumber awaiting shipment by rail. The construction of this
186 wharf has consumed 7,006,875 feet board measure of timber and plank, 848,658 lineal feet of round piles, and 215 tons of iron.

In manner of construction and for excellence of material, I think this may safely challenge a comparison with any similar structure in the world. Its efficiency for the purposes intended is best attested by the convenience and economy with which freight is handled and transshipped, and the security it affords the largest vessels, many of which have lain in its slips during the heaviest storms that have occurred since its construction, and with much less inconvenience than was experienced by vessels on the opposite side of the bay.

During the past year there have been loaded here with grain 110 vessels, carrying 161,135 tons, and all the local and overland freight received at or shipped from the terminus at San Francisco over your road, as well as all lumber, timber, ties, iron, and other material for use on the road, passes over this wharf.

The stability of this structure has as yet been unaffected by the action of the currents or by the heavy storms which at times prevail in the bay of San Francisco, and although it can not be re-
187 garded as permanent, its life will greatly exceed that of the San Francisco wharves, where the ravages of the teredo have been so destructive to all wooden structures exposed to their attack.

The immunity of the wharves on the eastern side of the bay from the attacks of the teredo is undoubtedly due to the fresh water from the Straits of Carquinez, which, at certain stages of the tide, flows along this shore.

The experiment of using piles treated by the "Robbins process," as a preventive both against decay and the work of the teredo, has been made at Oakland Wharf, and also in some of the new work at Second Street and in Mission Bay. The piles so treated have thus far withstood the attacks of the teredo, and, it is to be hoped, will continue to do so, as any process by which timber and piles may be treated, at a reasonable cost, and render it safe from the destructive agencies referred to, must prove of great value to your company, as well as to the public.

Work at San Francisco.—The additions which had been made to Second Street Wharf, San Francisco, though occupying all the available space south of Townsend Street, soon proved inadequate to the wants of the rapidly increasing freight business, and early in 1871 steps were taken for its better accommodation.

The block of ground lying between Fourth and Fifth, King and Townsend Streets was purchased as a site for temporary freight depots, and the use of the adjacent block west of Fifth Street and the greater portion of the block east of Fourth Street was also secured for yard purposes. Work was commenced on the buildings early in 1872. Meanwhile a new slip had been constructed for the steamer *Thoroughfare* (new car ferryboat) at the foot of King Street, and a double track was laid through King Street to the blocks above named, there connecting with ten parallel tracks, extending from Fourth to Sixth Streets, and two tracks on Townsend Street.

Two large buildings for the receiving and delivery of freight were also erected—one fifty feet in width, fronting on Townsend and extending from Fourth to Fifth Streets, and the other seventy-five feet in width, fronting on King Street, and likewise extending from Fourth to Fifth Street, a distance of eight hundred and twenty-five feet. The freight offices are in the second story of the latter, and the two buildings are connected by a footbridge over the ten tracks above noted. The general arrangement of the yard and buildings are, it is thought, the best of which the space occupied will admit; and the advantage of separate buildings for receiving and delivering, where so large an amount of freight is daily handled, must be apparent to anyone who has experience in the business.

A large amount of work has been done in Mission Bay conjointly with the Southern Pacific Railroad Company—wharves covering an area of nearly seven acres have been built, and two depots, 60 x 300 and 60 x 500 feet, respectively, have been erected thereon. Tracks have been laid connecting these depots and wharves with the main tracks at Fourth and Townsend Streets. Spur tracks have also been laid from King Street to the Pacific Mail Steamship Company's wharf, at the foot of Beale Street, and to Hooper's warehouse, between Berry and Channel Streets. The former is a most important

connection, as it brings the cars within a convenient distance of the China steamers, thus facilitating the transshipment of teas, silks, and, in fact, of all Asiatic freight seeking overland transit. It may be noted here that it is only on those wharves not directly under the control of the State or city government that this connection of ship and car has been accomplished, and until further action of the

proper authorities shall have removed the present restrictions, 190 which prevent the bringing together of ship and car in Mission

Bay, you will be unable to use to advantage the property already acquired there for depot purposes. The new buildings and yard in San Francisco have now been in use for more than a year, and although the amount of business is already large, it is thought they will be found adequate to the requirements for two or three years to come, or until the grading of the Mission Bay lands and the erection of permanent depots thereon shall have been accomplished. An important feature of the improvements made by your company in this part of the city is the new building for your general offices. It is located on the corner of Fourth and Townsend Streets, fronting one hundred and eighty feet on each, with a depth of sixty and seventy feet, respectively. It is three stories high, built of brick upon a pile foundation, with front of pressed brick, and is constructed throughout in the most thorough and substantial manner. It contains seventy-seven rooms and was planned especially with a view to the convenience of the several departments by which it is to be occupied.

I omitted to mention a large amount of grading in Mission Bay, consisting of a wide embankment extending from Channel 191 Street southerly on the eastern line of Illinois Street to the Potrero, at which place the greater part of the material for the work was obtained. This work was also done conjointly with the Southern Pacific Railroad Company and is preliminary to the work of reclaiming the lands granted by the State to the two companies for depot purposes. The expenditures upon the work south of Channel Street have already amounted to \$352,224.

Shops.—The construction of shops for the motive power and car departments was, of course, coincident with the construction of your road. Sacramento being a central and convenient point for the principal manufacturing and repair shops, it was early decided to locate them at this place, and the small structures at first required have gradually given place to the present large and commodious buildings, consisting of a roundhouse with stalls for twenty-nine locomotives; a machine shop one hundred by four hundred feet; car shop, ninety by two hundred and thirty feet, two stories high, with wing ninety by three hundred and ten feet; paint shop, two hundred and twenty-five by seventy feet, with five wings each twenty-four by seventy feet.

blacksmith shop, two hundred and fifty feet long, of which one
192 hundred and forty-five feet are sixty, and the rest ninety feet
in width; boiler shop, sixty by one hundred and seventy feet;
foundry, one hundred and twenty by eighty-three feet; copper shop,
fifty-two by seventy feet; and a supply store, thirty-four by sixty
feet. All of these shops are supplied with tools and machinery of
the latest and most approved kind, and for economy and class of
work produced are unsurpassed by any similar works in the country.

The necessities of your work will soon require a rolling mill, for
which Sacramento will be a convenient location.

The car and machine shops, blacksmith shop, and roundhouse are
built of brick, the others of wood. The ground upon which these
buildings are located has mostly been reclaimed from what was formerly
a swamp, and has been filled from a depth of ten to twenty-
five feet, and the work of grading is still in progress, the necessity
for more room in the near future being already apparent. About
twelve hundred men are regularly employed in these shops.

In addition to the above, division repair shops have been erected
at San Francisco, Oakland Point, Lathrop, Rocklin, Truckee,
193 Wadsworth, Winnemucca, Carlin, Toano, Terrace, and Ogden.

Commodious depot buildings, adapted to the wants of the
business, have been erected at the principal stations, and the necessary
provision made for the storage of fuel and water.

Snow galleries.—A novel and important feature of the work on
the Sierra Nevada has been the construction of galleries for the pro-
tection of the track from the heavy snowstorms incident to that
region. The experiment was first made of covering the track in the
cuts only, depending upon snowplows for clearing the embankments,
but experience soon proved that where snow was liable to accumulate
to a great depth its removal even from the high embankments would
incur great expense and often delay the movement of trains; and it
was therefore deemed best to make the covering through the deep
snow belt continuous. More than thirty miles of these galleries were
built, consuming 44,639,552 feet, board measure, of sawed timber,
and 1,316,312 lineal feet of round timber, equivalent in the aggregate
to 52,537,424 feet, board measure, of sawed timber, and 721
tons of iron and spikes. Two general styles of construction were
adopted—one intended for localities where the weight of the
194 snow only had to be supported, and the other for such places
as were exposed to “slides” and the slower but almost irre-
sistible “glacial movement” of the snow on the steep and rocky
slopes along which a great portion of the road near the summit was
built.

A detailed description of the manner of constructing these gal-
leries would occupy too much space for this report, but I need only

say that they have proven a complete success, and though frequently covered with drifted snow to a depth of ten or twenty, and, in some places on the slope of Donner Mountain, of more than fifty feet, they have afforded a safe passage for trains through this inclement region at all times and seasons without any noticeable detentions.

As a security against fire the wooden coverings of sections of the sheds, of from one hundred to two hundred feet in length, at intervals of one-fourth to one-half mile, is being replaced with galvanized corrugated iron, and this work will be extended as rapidly as the material can be procured.

Present condition of the road.—The necessary repairs of track, bridges, buildings, wharves, etc., have been kept up, so that, with the exception of the unavoidable wear of track incident to the heavy business of the road, it is at present in better condition than at any time since its construction.

In consequence of the heavy grades and sharp curves on the mountain divisions the life of the iron on that part of your road must always be much less than on the lighter grades of the valleys, and the renewal of some portions of the mountain track has already been found necessary. During the past year there have been received two thousand and fourteen tons of steel rails, weighing sixty pounds per yard, sufficient for twenty-one and a half miles of track, most of which has already been laid upon the mountain division. The superiority of this over iron rail, especially where exposed to the heavy service of your main lines, both on the mountains and in the valleys, can not be questioned. Its use on eastern roads is highly commended wherever it has been tried, and that the truest economy will always be found in the use of the best procurable materials, not only in track but all railroad structures, can not be doubted.

As a matter both of utility and experiment, a small amount of this steel rail has been laid on Oakland wharf and in the yard at San

Francisco, at points exposed to excessive wear, and the result has been very satisfactory. In one locality they have already outlasted three sets of iron rails, and the wear on the steel rail is almost imperceptible. I would recommend to your board the propriety and economy of providing steel rail not only for the mountain track but of the whole of your main lines as rapidly as the renewal of the rail may be necessary. The renewal of a considerable number of ties on the Truckee, Humboldt, and Salt Lake divisions has already been found necessary.

The ties laid between Promontory and Ogden, which were obtained on the Wahsatch and Uintah Mountains, have been found to decay most rapidly, the quality of the timber found on those ranges being evidently inferior to that of the Sierra Nevada, from which source most of the ties used between Blue Canon and Promontory have been

obtained. A great difference is noticed in the life of the ties laid on the sandy and gravelly soil of the highlands and the strongly saline and alkaline soil of the river bottoms and "sinks" east of Wadsworth.

In the former most woods are found to decay more or less rapidly, while in the latter the ties are still as sound as when first laid.

Besides the ordinary repairs, a large amount of work has from time to time been done in the widening of deep cuts, where the material has been loosened by blasting and in additions to the high embankments.

Bridges and trestles.—All of the bridges on your road are in good condition.

The only renewals of bridges required thus far have been to supply losses by fire, which have occurred in a few instances. All bridges over sixty feet span are of the "Howe truss" and are equal to the best class of wooden structures.

The ultimate replacement of these structures with iron bridges will undoubtedly be found advisable, but they may be safely depended upon for many years yet as safe against ordinary causes of decay.

The trestle work found necessary to introduce in the first construction has in some instances been replaced with stone culverts and embankments, and elsewhere it has been kept in thorough repair. Between Promontory and Blue Creek the line has been changed so as to avoid the two high trestles over which the track was originally laid, and at Blue Creek a stone arch culvert has been built, and the high trestle at that place replaced by an embankment.

A number of the smaller trestles, twenty or more, at different points on the Salt Lake and Humboldt divisions have been similarly replaced.

On the Sierra Nevada two trestles have already been filled, one near Colfax and one near Clipper Gap; another, crossing Deep Gulch about a mile east of Clipper Gap (the highest structure of the kind on the road), will soon be abandoned for the track just built upon a new line (without trestle), crossing the gulch just above the old one.

This change of line was necessary, as it was not deemed prudent to build an embankment on the old line and maintain the trestle at the same time. This change has materially improved the alignment, but has involved the necessity of an open cut of 90,000 and an embankment of 70,000 cubic yards, a tunnel 700 feet in length, with approaches of 100 feet on either end. Five hundred feet in length of this tunnel has been lined with granite masonry, with portals of the same material.

The other trestles, between and including those at Newcastle and Secrettown—seven in number—have recently been thoroughly repaired, and may safely be depended upon for three and probably four or five years. To replace these, embankments aggregating 653,000 cubic yards will be required at a probable cost not to exceed forty cents per yard.

The long trestle forming the northern approach to the American River bridge has just been repaired, and may now be considered good for five years, and probably longer. This, like other similar structures in the valley, already referred to, must always be maintained.

The force at present employed on repairs of track, bridges, etc., is lighter than at any previous time since the road has been in operation, and it is thought that the expenses properly chargeable to this account may be kept within the present cost. The rapidity with which the track will require renewal will, of course, depend largely upon the amount of tonnage carried over it and the speed with which it is moved, and, as before mentioned, I would most earnestly recommend that whenever renewals of any kind become necessary they be made with the best and most durable materials. Though not always practicable in the first construction, permanent structures are in the end the most economical, and the amount of business that may be reasonably anticipated for your road will certainly warrant their adoption in the future.

The accompanying map shows the line of your road and its connections and their relative position to the great valleys of the State.

Respectfully submitted.

S. S. MONTAGUE, *Chief Engineer.*

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201 DEFENDANTS' EXHIBIT No. 23, MARCH 12, 1915.

(10. Report of the Central Pacific Railroad Company for the year ending June 30, 1875.)

CENTRAL PACIFIC R. R. Co.,
C. P. HUNTINGTON, V. PREST.,
NOS. 9 NASSAU & 11 PINE STS.,
New York, September 13th, 1875.

HON. C. DELANO,

Secretary of the Interior, Washington, D. C.

SIR: I have the honor to hand you herewith "Annual report of the Central Pacific R. R. Co. of Cal." and the "Western Pacific R. R. Co." and the "California & Oregon Railroad Company" and the "San Francisco, Oakland & Alameda R. R. Co.," and the "San

Joaquin Valley R. R. Co.," consolidated under the name of the "Central Pacific Railroad Company," for the year ending June 30, 1875.

Very respectfully, yours,

C. P. HUNTINGTON, V. P.

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General superintendent's report.

GENERAL SUPERINTENDENT'S OFFICE,
San Francisco, June 1st, 1875.

HON. LELAND STANFORD,

President C. P. R. R. Co.

DEAR SIR: I beg to hand you herewith annual report of the operations of the road for the year ending December 31st, 1874, together with comparative statements of the earnings and expenses of the preceding year:

Earnings.	1873	1874
Gross earnings, coin.....	\$7, 643, 469. 58	\$8, 276, 301. 55
Gross earnings, currency.....	5, 220, 483. 40	5, 334, 729. 08
Total earnings, coin and currency.....	12, 863, 952. 98	13, 611, 030. 63
Total earnings, equal to currency.....	13, 851, 489. 24	14, 531, 355. 36
Operating expenses.	1873	1874
Operating expenses, coin.....	\$4, 929, 684. 09	\$5, 223, 429. 42
Operating expenses, currency.....	39, 587. 43	44, 702. 45
Total expenses, coin and currency.....	4, 969, 271. 52	5, 268, 131. 87
203 Total expenses, equal to currency.....	5, 606, 186. 70	5, 848, 977. 22
Percentage of operating expenses to gross earnings.....	40. 47	40. 25

As shown above, a slight decrease is noticeable in the percentage of operating expenses to gross earnings as compared with 1873.

The earnings over operating expenses for 1874 were (all in currency)..... \$8, 682, 378. 14
For year ending December 31st, 1873..... 8, 245, 302. 54

Being a gain of..... \$437, 075. 00

Or $5\frac{30}{100}$ per cent.

The number of miles of road operated, including the ferry between San Francisco and Oakland Wharf, at the close of the year, was $1,212\frac{33}{100}$ miles. There are also 74 miles in the San Joaquin Valley operated under lease from the Southern Pacific R. R. Co., of which $32\frac{1}{10}$ miles were completed November 8th.

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(11. Report of the Central Pacific Railroad Company for the year ending June 30, 1876.)

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General superintendent's report.

GENERAL SUPERINTENDENT'S OFFICE,
San Francisco, June 20th, 1876.

HON. LELAND STANFORD,
President C. P. R. R. Co.

SIR: I herewith submit annual report of the operations of the road for the year ending December 31st, 1875, together with comparative statements of the earnings and operating expenses for the year 1874:

Earnings.	1874		1875	
Gross earnings in coin.....	\$8, 276, 301. 55		\$9, 063, 729. 08	
Gross earnings in currency.....	5, 334, 729. 08		6, 601, 362. 08	
Total earnings, coin and currency.....	13, 611, 030. 63		15, 665, 091. 16	
Total earnings, equal to currency.....	14, 531, 355. 36		17, 021, 015. 76	

Operating expenses.	1874		1875	
Operating expenses, coin.....	\$5, 223, 429. 42		\$6, 221, 554. 76	
Operating expenses, currency.....	44, 702. 45		265, 645. 16	
Total expenses, coin and currency.....	5, 268, 131. 87		6, 487, 199. 92	
Total expenses, equal to currency.....	5, 818, 977. 22		7, 417, 944. 48	
Percentage of operating expenses to gross earnings..	40. 25		43. 5	

The earnings over operating expenses in 1875 (all in currency) were..... \$9, 063, 071. 36

For year ending December 31st, 1874..... 8, 682, 373. 16

Being a gain of..... 920, 698. 20

Or 10.60 per cent.

At the close of the year there were, including the ferry between San Francisco and Oakland Wharf, 1,212 $\frac{33}{100}$ miles of road in operation under my management. To this should be added 96 miles in the San Joaquin Valley operated under lease from the Southern Pacific Railroad Company, of which 22 $\frac{4}{10}$ miles were completed May 11th, 1875.

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206 I respectfully refer you to the report of the chief engineer for information relative to the track, bridges, snow galleries and buildings.

The large and convenient passenger apartments and baggage room at the new slips on East Street, near the foot of Market Street, in this city, were completed and occupied by the company for the ferry and general passenger travel of the Central Pacific Railroad September 4th, 1875. Adjoining these on the south is Market Street Wharf, used for the river steamers, together with those running between San Francisco and south Vallejo in connection with the California Pacific Railroad, thus concentrating our passenger travel at this point, which is reached by the street car lines, whose cars run through many of the business streets and pass the principal hotels.

The telegraph fire-alarm system and railroad patrol, inaugurated in 1874 and referred to in my last report, together with the water trains, which were run two days of each week, thoroughly wetting down the inside of galleries and snowsheds between Blue Canyon and Truckee, proved a most thorough protection against fire, and I have no losses of any moment to report from this source during the season.

207 It is gratifying, indeed, to notice a marked increase in the general traffic of the road over the preceding year, which is an index of the general prosperity of California, as well as of the entire Pacific coast, which has been comparatively exempt from the universal business depression experienced in the States east of the Rocky Mountains.

The rapid increase of business necessarily demands a large addition to the rolling stock, which is now in course of construction. This will be completed in time to move the products of the country, which promises to exceed in quantity and value those of any previous year.

While the traffic of the Visalia and Tulare divisions is comparatively light, it is very encouraging to note the extensive arrangements which are being made for irrigation and for general agricultural development all along the line, especially in the rich region of the State embraced in Fresno, Tulare, and Kern Counties, which development is made possible by the extension of the road through the San Joaquin Valley to Caliente, three hundred and twenty-four miles from San Francisco. This road offers to that section of the country the long-desired outlet to market, and a large increase
208 of business may be expected in the near future from it and the rich mining districts beyond.

The Eureka and Palisade Railroad (narrow gauge), referred to in my last report, was completed to Eureka (90 miles from Palisade) in November, 1875.

The Nevada County R. R. (also a narrow gauge), extending from Colfax to Grass Valley and Nevada City, was completed and in operation May 24th, 1876.

Both, it is believed, will contribute much business to our line.

I would add in conclusion that the present business prospects of the company for the year 1876 are very flattering, with indication of a large increase over the preceding year.

Respectfully submitted.

A. N. TOWNE,
General Superintendent.

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(12. Report of the Central Pacific Railroad Company for the year ending June 30, 1877.)

FROM CENTRAL PACIFIC R. R. CO.,
C. P. HUNTINGTON, V. PRES.,
NOS. 9 NASSAU & 11 PINE STS.,
New York, Oct. 3d, 1877.

Hon. CARL SCHURZ,

Secretary of the Interior &c. &c., Washington, D. C.

SIR: I have the honor to hand you herewith the Annual Report of the Central Pacific Railroad Company to the Secretary of the Interior for the year ending June 30th, 1877, the receipt of which will thank you to acknowledge.

Very respectfully,

C. P. HUNTINGTON, *Vice Pres.*

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To appease public clamor and to remove all doubt or uncertainty relative to the question of survey and measurement, and that it might hereafter remain beyond cavil, Congress, on the 10th day of July, 1876, by a resolution of the House of Representatives requested the Hon. Secretary of War to detail a sufficient force from the Engineer Corps of the Army to make a careful and exact survey of the Central Pacific Railroad Company, it having been alleged that the measurement reported by the company was at least hastily made if not intentionally incorrect.

But it will be seen by the report of Government engineers in charge that after a most careful and accurate survey they certify that the road is 951/1000 of a mile longer than the distance upon which bonds were issued.

In this connection it is but proper that I should quote from the closing paragraph of the official report of W. H. Heuer, captain of U. S. Engineers in charge, in which he says: "Although not a

quired of me in this report, I feel it but doing the Central Pacific Railroad Company an act of justice to mention the admirable condition in which their road bed was found. It is certainly maintained to that high standard of excellence so important and necessary to a national road."

Accepting the Government survey of the distance between Sacramento and Ogden, together with a careful measurement of other portions of the road, we had at the commencement of the year, including the ferry between San Francisco and Oakland Wharf and that portion of the Southern Pacific Railroad between Goshen and Caliente (operated under lease), in the aggregate 1,308.87 miles. There was laid during the year 71/100 miles of track—70/100 between East Oakland and Melrose and 1/100 between Broadway and Masticks. Also additions of leased lines have been made at different times, as follows:

Southern Pacific R. R. Co.:

May 26th.	Callente to Keene.....	13. 60
August 8th.	Keene to Mojave.....	31. 80
September 6th.	Los Angeles to Mojave.....	100. 50
September 6th.	Los Angeles to Wilmington.....	22. 30
September 6th.	Los Angeles to Indio.....	129. 50

Los Angeles & San Diego R. R. Co.:

September 6th.	Florence to Anaheim.....	20. 70
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212 Northern Railway Company:

August 16th.	West Oakland to Shell Mound.....	2. 12
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Berkeley Branch R. R. Co.:

August 16th.	Shell Mound to Berkeley.....	3. 16
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Amador Branch R. R. Co.:

December 3d.	Galt to Ione.....	27. 20
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making a total at the close of the year of 1,660.46 miles operated.

The completion of that portion of the Southern Pacific Railroad (leased to the Central Pacific Railroad Co.) to the Colorado River secures to that company the traffic to and from Arizona, which promises to be very large; and as the road shall be extended beyond the river through this rich mining territory it will largely develop and secure the trade also of New Mexico and the adjacent country.

The looked for remunerative business over this long line will, we confidently believe, materially increase the earnings for the current year and more than compensate for the loss of traffic we may expect from the short harvest consequent upon the drouth more or less affecting the southern portion of the State.

Respectfully submitted.

A. N. TOWNE,
General Superintendent.

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(1. Extract from return of Central Pacific Railroad Company page 77, part 2, Biennial Report of Commissioner of Transportation of California for years ending December 31, 1877 and 1878.)

Roads belonging to other companies, operated by this company under lease or contract.

30. Names, description, and length of each.

Union Pacific.—Termini: From Ogden to five miles west. Length: 5.00 miles. Date of lease: From June 30, 1875, to June 30, 1877. Amount of rental: The same amount per mile as the Union Pacific Railroad Company earns net per mile on the line of its road operated by itself.

Southern Pacific.—Termini: From Huron to Colorado River. Length: 529.90 miles. Date of lease: From Sept. 1, 1876, to six months' notice. Amount of rental: Five hundred dollars per mile per month, less two hundred and fifty dollars per mile per month for operating expenses.

Southern Pacific.—Termini: From Los Angeles to Wilmington. Length: 22.30 miles. Date of lease: Sept. 1, 1876, to six months' notice. Amount of rental: Five hundred dollars per mile per month, less two hundred and fifty dollars per mile per month for operating expenses.

Los Angeles and San Diego.—Termini: From Florence to Santa Ana. Length: 27.82 miles. Date of lease: Sept. 1, 1876, to six months' notice. Amount of rental: Net receipts.

Los Angeles and Independence.—Termini: From Los Angeles to Santa Monica. Length: 18.00 miles. Date of lease: From June 30, 1877, to notice. Amount of rental: Two thousand seven hundred dollars per annum.

Sacramento and Placerville.—Termini: From Sacramento to Brighton. Length: 5.64 miles. Date of lease: From Sept. 1, 1869, to notice. Amount of rental: One thousand five hundred dollars per month. (Mem.—This 5.64 miles is not operated by the Central Pacific, except to run its trains thereon; it leases only the right to use the track.)

Stockton and Copperopolis.—Termini: From Stockton to Milton. Length: 44.65 miles. Date of lease: From June 30, 1874, to January 1, 1905. Amount of rental: The principal and interest of one thousand five per cent five-hundred-dollar thirty-year bonds.

215 Amador Branch.—Termini: From Galt to Ione. Length: 27.05 miles. Date of lease: Jan. 1, 1877, to notice. Amount of rental: Forty thousand five hundred dollars per annum.

Berkeley Branch.—Termini: From Shell Mound to Berkeley. Length: 315 miles. Date of lease: From Jan. 1, 1877, to notice. Amount of rental: Six thousand dollars per annum.

Northern Railway.—Termini: From West Oakland to Delaware Street; length, 4.59 miles; from junction near Woodland to Williams; length, 39.20 miles. Date of lease: July 1, 1876, to notice. Amount of rental: One thousand five hundred dollars per annum.

California Pacific.—Termini: From South Vallejo to Sacramento; length, 60.17 miles; from Adelante to Calistoga; length, 34.60 miles; from Davisville to Marysville;¹ length, 43.56 miles; from San Francisco to South Vallejo; length, 26.25 miles. Date of lease: From July 1, 1876, to July 1, 1905. Amount of rental: Five hundred and fifty thousand dollars per annum and three-fourths of the net earnings in excess of that amount.

Total length	-----	891. 88 miles.
Not operated (see note) ¹	-----	25. 24 miles.

Total length leased lines operated	-----	866. 64 miles.
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216 DEFENDANTS' EXHIBIT No. 24, MARCH 12, 1915.

(2. Extract from return of Central Pacific Railroad Company; page 317, Biennial Report of Commissioner of Transportation of California, for the years ending December 31, 1877 and 1878.)

Roads belonging to other companies operated by this company under lease or contract.

30. Names, description, and length of each.

Union Pacific.—Termini: From Ogden to five miles west. Length: 5.00 miles. Date of lease: From June 30, 1874, to June 30, 1874. Amount of rental: The same amount per mile as the Union Pacific Railroad Company earns net per mile on the line of its road operated by itself.

Southern Pacific.—Termini: From Huron to Yuma. Length: 530.30 miles. Date of lease: From Sept. 1, 1876, to sixty days' notice. Amount of rental: Five hundred dollars per mile per month, less two hundred and fifty dollars per mile per month for operating expenses.

¹ Operated only from Davisville to Knights Landing, 18.32 miles.

Southern Pacific.—Termini: From Los Angeles to Wilmington.
Length: 22.30 miles. Date of lease: From Sept. 1, 1876, to
217 sixty days' notice. Amount of rental: Five hundred dollars
per mile per month, less two hundred and fifty dollars per mile
per month for operating expenses.

Los Angeles and San Diego.—Termini: From Florence to Santa
Ana. Length: 27.82 miles. Date of lease: From Sept. 1, 1876, to
sixty days' notice. Amount of rental: Net receipts.

Los Angeles and Independence.—Termini: From Los Angeles to
Santa Monica. Length: 16.69 miles. Date of lease: From June 4,
1877, to notice. Amount of rental: Twenty-six thousand and six
hundred and twenty-eight dollars and ninety cents for the year.

Sacramento and Placerville.—Termini: From Sacramento to
Brighton. Length: 5.64 miles. Date of lease: From Sept. 1, 1869, to
notice. Amount of rental: One thousand five hundred dollars per
month. (Mem.—This 5.64 miles is not operated by the Central
Pacific Railroad except to run its trains thereon; it leases the right
to use the track.)

Stockton and Copperopolis.—Termini: From Stockton to Milton;
from Peters to Oakdale. Length: 44.65 miles. Date of lease: Dec. 30,
1874, to January 1, 1905. Amount of rental: The principal and
interest on one thousand five per cent five hundred dollar
218 thirty-year bonds; if the net earnings for any year exceed
the interest on the bonds, such excess to be applied to the
floating debt of the Stockton and Copperopolis Railroad Company.

Amador Branch.—Termini: From Galt to Ione. Length: 27.05
miles. Date of lease: Jan. 1, 1877, to notice. Amount of rental: Forty
thousand five hundred dollars per annum.

Berkeley Branch.—Termini: From Shell Mound to Berryman.
Length: 3.83 miles. Date of lease: From Jan. 1, 1877, to notice.
Amount of rental: Six thousand dollars per annum.

Northern Railway.—Termini: From West Oakland to Martinez;
from Woodland to Willows. Length: 94.62 miles. Date of lease:
July 1, 1876, to notice. Amount of rental: One thousand five hun-
dred dollars per mile per annum; that portion of road between West
Oakland and Martinez has been given its proportion of earnings
since September 1, 1878.

California Pacific.—Termini: From South Vallejo to Sacramento,
length, 60.17 miles; from Adelante to Calistoga, length, 34.60 miles;
from Davisville to Knight's Landing, length, 18.60 miles; from San
Francisco to South Vallejo, length, 26.25 miles. Date of lease:
From July 1, 1876, to July 1, 1905. Amount of rental: Five hun-
dred and fifty thousand dollars per annum and three-fourths
219 of the net earnings in excess of that amount.

San Pablo and Tulare.—Termini: From Martinez to Tracy, length, 47.61 miles. Date of lease: From Sept. 8, 1878, to -----

Amount of rental: Proportion of earnings.

Total length, 965.13 miles.

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DEFENDANTS' EXHIBIT No. 24, MARCH 12, 1915.

(3. Statement for the year ending December 31, 1880; third annual report of the Board of Railroad Commissioners of California for the years ending December 31, 1880, 1881, and 1882, page 191.)

Roads belonging to other companies, operated by this company under lease or contract.

30. Names, description, and length of each.

Union Pacific.—Termini: From Ogden to five miles west. Length: 5.00 miles. Date of lease: From June 30, 1874, to 1,000 years. Amount of rental: The same rate per mile as Union Pacific Railroad Co. earns net per mile on the line of its road operated by itself.

Southern Pacific of California.—Termini: Huron to Yuma. Length: 528.56 miles. Date of lease: From Jan. 1, 1880, to 5 years. Amount of rental: \$250 per mile per month.

Southern Pacific of California.—Termini: Los Angeles to Wilmington. Length: 21.64 miles. Date of lease: Jan. 1, 1880, to 5 years. Amount of rental: \$250 per mile per month.

Southern Pacific of Arizona.—Termini: From Yuma to New Mexico line. Length: 383.21 miles. Date of lease: Nov. 1, 1880, to 5 years. Amount of rental: \$125 per mile per month to June 30; \$135 per mile per month balance of year.

Southern Pacific of New Mexico.—Termini: From New Mexico line to Deming. Length: 93.80 miles. Date of lease: From Nov. 1, 1880, to 5 years. Amount of rental: \$135 per mile per month October, November, and December.

Los Angeles and San Diego.—Termini: Florence to Santa Ana. Length: 27.83 miles. Date of lease: From Nov. 1, 1880, to 5 years. Amount of rental: \$100 per mile per month from November 1, 1880, and taxes.

Los Angeles and Independence.—Termini: From Los Angeles to Santa Monica. Length: 16.83 miles. Date of lease: Nov. 1, 1880, to 5 years. Amount of rental: \$2,126.30 per month to October 31; \$1,683 for balance of the year, and taxes.

Sacramento and Placerville.—Termini: From Sacramento to Brighton. Length: 5.64 miles. Date of lease: From notice to ----- . Amount of rental: \$600 per month for use of track only.

Stockton and Copperopolis.—Termini: From Stockton to Milton; from Peters to Oakdale. Length: 49.0 miles. Date of lease: Jan. 1875, to Jan. 1, 1905. Amount of rental: The principal and
 222 interest on one thousand five per cent \$500 thirty-year bonds, and net earnings on all expenses to apply on floating debt of Stockton and Copperopolis Railroad Co.

Amador Branch.—Termini: From Galt to Ione. Length: 27.30 miles. Date of lease: From Nov. 1, 1880, to 10 years. Amount of rental: \$2,126.30 per month to Oct. 31 and \$3,500 per month for balance of year, and taxes.

Berkeley Branch.—Termini: Shell Mound to Berryman's. Length: 3.84 miles. Date of lease: From Nov. 1, 1880, to 10 years. Amount of rental: \$500 per month to Oct. 31 and \$768 per month for balance of year, and taxes.

Northern Railway.—Termini: From West Oakland to near Martinez; from Woodland to Willows; from Port Costa to Suisun. Length: 112.61 miles. Date of lease: From Jan. 1, 1880, to 5 years. Amount of rental: \$570,000 per annum.

San Pablo and Tulare.—Termini: From near Martinez to Tracy. Length: 46.51 miles. Date of lease: From Jan. 1, 1880, to 5 years.

California Pacific.—Termini: From Vallejo Junction to Vallejo; from Vallejo to Sacramento; from Davisville to Knight's Land; from Napa Junction to Calistoga. Length: 115.44 miles. Date of lease: From Jan. 1, 1880, to July 1, 1905. Amount of rental: \$600,000 per annum.

223 Western Development Co.—Termini: Colorado River Bridge. Length: 700 feet. Amount of rental: \$100,000 per month.

224 DEFENDANT'S EXHIBIT No. 24, MARCH 12, 1915.

(4. Statement for the year ending December 31, 1881; third annual report of the Board of Railroad Commissioners of California for the years ending December 31, 1880, 1881, and 1882, page 373.)

Roads belonging to other companies operated by this company under lease or contract.

Names, description, and length of each.

Southern Pacific.—Termini: From Huron to Yuma, length, 528.50 miles; from Los Angeles to Wilmington, length, 21.64 miles. Date of lease: From Jan. 1, 1880, to five years. Amount of rental: \$230 per mile per month.

Southern Pacific of Arizona.—Termini: From Yuma to New Mexico; length, 384.17 miles. Date of lease: From Nov. 1, 1880, to five years. Amount of rental: \$135 per mile per month.

Southern Pacific of New Mex.—Termini: From New Mexico to Rio Grande. Length: 167.22 miles. Date of lease: From Nov. 1, 1880, to five years. Amount of rental: \$135 per mile per month.

Galveston, Harrisburg & San A.—Termini: From Rio Grande to Chispa. Length: 147.11 miles. Date of lease: From Oct. 9, 1881, 'till complete to San Antonio. Amount of rental: \$83.33 per mile per month.

California Pacific.—Termini: From Vallejo Junction to Vallejo; length, 2.00 miles. From Vallejo to Sacramento; length, 60.39 miles. From Davis to Knights; length, 18.57 miles. From Napa Junction to Calistoga; length, 34.48 miles. Date of lease: From Jan. 1, 1880, to July 1, 1905. Amount of rental: \$600,000 per annum.

Northern Railway.—Termini: From West Oakland to near Martinez; from Woodland to Willows; from Port Costa to Suisun. Length: 112.61 miles.

San Pablo and Tulare R. R.—Termini: From near Martinez to Tracy. Length: 46.51 miles. Date of lease: From Jan. 1, 1880, to five years. Amount of rental: \$570,000 per annum.

Los Angeles and Independence.—Termini: From Los Angeles to Santa Monica. Length: 16.83 miles. Date of lease: From Nov. 1, 1880, to five years. Amount of rental: \$1,683 per month and taxes.

Los Angeles and San Diego.—Termini: From Florence to Santa Ana. Length: 27.83 miles. Date of lease: From Nov. 1, 1880, to five years. Amount of rental, \$2,783 per month and taxes.

Pacific Improvement Co.—Termini: Colorado River Bridge. Length: .13 mile. Amount of rental: \$1,000 per month.

Sacramento and Placer R. R.—Termini: From Sacramento to Brighton. Length: 5.64 miles. Date of lease: From notice to ——. Amount of rental: Jan., \$600; Feb. 1 to May 16, \$1,000 per month; May 17 to Dec. 31, \$600 per month.

Berkeley Branch R. R.—Termini: From Shell Mound to Berryman. Length: 3.84 miles. Date of lease: From Nov. 1, 1880, to ten years. Amount of rental: \$768 per month and taxes.

Stockton and Copperopolis.—Termini: From Stockton to Milton; from Peters to Oakdale. Length: 49.00 miles. Date of lease: From Jan. 1, 1875, to Jan. 1, 1905. Amount of rental: The principal and interest on one thousand five per cent \$500 bonds, thirty years, and net earnings over all expenses, to apply to floating debt of Stockton and Copperopolis R. R.

Amador Branch.—Termini: From Galt to Ione. Length: 27.20 miles. Date of lease: From Nov. 1, 1880, to five years. Amount of rental: \$3,500 per month and taxes; 2d five years at \$4,000 per month and taxes.

Union Pacific.—Termini: From Ogden to five miles west. Length, 5.00 miles. Date of lease: From June 30, 1874, to June 30, 1874.

Amount of rental: The same rate per mile as the Union Pacific earn net per mile on the line of its own road operated by itself.

Bridge crosses Rio Grande.—Length: .23 mile.

Total, 1,658.96 miles.

(5. Statement for the year ending December 31, 1882; fifth annual report of the Board of Railroad Commissioners of California for the year ending December 31, 1884; page 67.)

Roads belonging to other companies operated by this company under lease or contract.

30. Names, description, and length of each.

Southern Pacific of California.—Termini: From Huron to Colorado River. Length: 528.56 miles. Amount of rental: \$250 per mile per month.

Southern Pacific of California.—Termini: From Los Angeles to San Pedro. Length: 24.24 miles. Amount of rental: \$250 per mile per month.

Southern Pacific of California.—Termini: from Calico to Mojave. Length: 80.33 miles. Amount of rental: \$125 per mile per month.

Southern Pacific of Arizona.—Termini: From Colorado River to New Mexico. Length: 384.17 miles. Amount of rental: \$135 per mile per month and taxes.

Southern Pacific of New Mexico.—Termini: From Arizona
229 to Rio Grande. Length: 167.22 miles. Amount of rental: \$135 per mile per month.

Pacific Improvement Company.—Colorado River Bridge. Length: .13 mile. Amount of rental: \$1,000 per mile per month.

Pacific Improvement Company.—Rio Grande Bridge. Length: .23 mile. Amount of rental: \$1,000 per mile per month.

Galveston, Harrisburg and San A.—Termini: Rio Grande to L Zier, Texas. Length: 361.80 miles. Amount of rental: \$83.33 per mile per month.

Los Angeles and San Diego.—Termini: From Florence to Santa Ana. Length: 27.60 miles. Amount of rental: \$100 per mile per month and taxes.

Los Angeles and Independence.—Termini: From Los Angeles to Santa Monica. Length: 16.83 miles. Amount of rental: \$100 per mile per month and taxes.

Stockton and Copperopolis.—Termini: From Stockton to Milton; from Peters to Oakdale. Length: 49.00 miles. Amount of rental:

principal and interest on \$500,000, thirty year bonds at five per cent, and net earnings to apply on floating debt of H. C. R. R. Co.

Amador Branch.—Termini: From Galt to Ione. Length: 27.30 miles. Amount of rental: \$3,500 per month and taxes.

Berkeley Branch.—Termini: From Shell Mound to Berryman's; length, 3.84 miles. Amount of rental: \$768 per month and taxes.

California Pacific.—Termini: From Vallejo Junction to Vallejo; distance, 2.00 miles. From Vallejo to Sacramento; length, 60.39 miles. From Davisville to Knights Landing; length, 18.57 miles. From Napa Junction to Calistoga; length, 34.48 miles. Amount of rental: \$600,000 per annum.

Northern Railway.—Termini: From Port Costa to Suisun; length, 17.33 miles. From Oakland to Martinez; length, 35.56 miles. From Woodland to Willows; length, 64.25 miles. Amount of rental: \$7,500 per month, including, also, the San Pablo and Tulare Railroad (that company being leased to the Northern Railway Company).

Northern Railway.—Termini: From Willows to Tehama; length, 49 miles. Amount of rental: \$5,250 per month.

San Pablo and Tulare.—Termini: From Martinez to Tracy; length, 46.51 miles. Amount of rental: Included in lease of Northern Railway above.

Sacramento and Placerville.—Termini: From Sacramento to Brighton; length, 5.64 miles. Amount of rental: \$600 per month.

Union Pacific.—Termini: From Ogden to five miles west; length, 90 miles. Amount of rental: Same rate per mile as earned by Union Pacific Railroad on road operated by itself.

Total, 1,997.38 miles.

2 DEFENDANTS' EXHIBIT No. 24, MARCH 12, 1915.

(6. Statement for the year ending December 31, 1883; fifth annual report of the Board of Railroad Commissioners of California for the year ending December 31, 1884; page 232 of appendix.)

Roads belonging to other companies, operated by this company under lease or contract.

30. Names, description, and length of each.

Southern Pacific of California.—Termini: From Huron to Colorado River. Length: 528.56 miles. Amount of rental: \$250 per mile per month.

Southern Pacific of California.—Termini: From Los Angeles to San Pedro. Length: 24.24 miles. Amount of rental: \$250 per mile per month.

Colorado division S. P. of California.—Termini: From Mojave to The Needles. Length: 240.13 miles. Amount of rental: \$125 per mile per month.

Southern Pacific of Arizona.—Termini: From Colorado River to New Mexico. Length: 384.17 miles. Amount of rental: \$135 per mile per month and taxes.

Southern Pacific of New Mexico.—Termini: From Arizona to Rio Grande. Length: 167.22 miles. Amount of rental: \$135 per mile per month.

Pacific Improvement Company.—Colorado River Bridge. Length: 1.13 mile. Amount of rental: \$1,000 monthly.

Pacific Improvement Company.—Rio Grande Bridge. Length: 0.23 mile. Amount of rental: \$1,000 monthly.

Galveston, Harrisburg and San Antonio.—Termini: From Rio Grande Bridge to El Paso. Length: 3.61 miles. Amount of rental: \$83 per mile per month.

Galveston, Harrisburg and San Antonio.—Termini: From El Paso to Le Zier, Texas. Length: 358.20 miles. Amount of rental: \$83 per mile per month.

Los Angeles and San Diego.—Termini: From Florence to Santa Ana. Length: 27.60 miles. Amount of rental: \$100 per mile per month and taxes.

Los Angeles and Independence.—Termini: From Los Angeles to Santa Monica. Length: 16.83 miles. Amount of rental: \$100 per mile per month and taxes.

Stockton and Copperopolis.—Termini: From Stockton to Milton. Length: 49.00 miles. Amount of rental: \$100 per mile per month and taxes.

Principal and interest on \$500,000, thirty-year bonds at 6 per cent, and net earnings to apply on floating debt of Stockton and Copperopolis Railroad Company.

Amador Branch.—Termini: From Galt to Ione. Length: 27.00 miles. Amount of rental: \$3,500 per month and taxes.

Berkeley Branch.—Termini: From Shell Mound to Berryman. Length: 3.84 miles. Amount of rental: \$768 per month and taxes.

California Pacific.—Termini: From Vallejo Junction to Vallejo; length, 2.00 miles. From Vallejo to Sacramento; length, 60.39 miles. From Davisville to Knights Landing; length, 18.57 miles. From Napa Junction to Calistoga; length, 34.48 miles. Amount of rental: \$600,000 per annum.

Northern Railway.—Termini: From Port Costa to Suisun; length, 17.33 miles. From Oakland to Martinez; length, 35.56 miles. From

Woodland to Willows; length, 64.25 miles. Amount of rental: \$47,500 per month, including, also, the San Pablo and Tulare Railroad (that company being leased to Northern Railway Company).

Northern Railway.—Termini: From Willows to Tehama. Length: 36.49 miles. Amount of rental: \$4,750 per month.

San Pablo and Tulare.—Termini: From Martinez to Tracy. Length: 46.51 miles. Amount of rental: Included in lease of 235 Northern Railway above.

Sacramento and Placerville.—Termini: From Sacramento to Brighton. Length: 5.64 miles. Amount of rental: \$600 per month.

Union Pacific.—Termini: From Ogden to five miles west. Length: 5.00 miles. Amount of rental: Same rate per mile as earned by Union Pacific Railroad on road operated by itself.

Total length, 2,157.18 miles.

236 DEFENDANTS' EXHIBIT NO. 24, MARCH 12, 1915.

(7. Statement for the year ending December 31, 1884; seventh annual report of the Board of Railroad Commissioners of California for the year ending December 31, 1886; page 69 of appendix.)

Roads belonging to other companies operated by this company under lease or contract.

30. Names, description, and length of each.

Southern Pacific Railroad of California.—Termini: From Huron to Colorado River. Length: 528.56 miles. Amount of rental: \$250 per mile per month.

Southern Pacific Railroad of California.—Termini: From Los Angeles to San Pedro. Length: 24.24 miles. Amount of rental: \$250 per mile per month.

Southern Pacific Railroad of Arizona.—Termini: From Colorado River to New Mexico. Length: 384.17 miles. Amount of rental: \$135 per mile per month and taxes.

Southern Pacific Railroad of New Mexico.—Termini: From Arizona to Rio Grande. Length: 167.22 miles. Amount of rental: \$135 per mile per month.

Pacific Improvement Company.—Col. River Bridge. 237 Length: .13 mile. Amount of rental: \$1,000 per month.

Pacific Improvement Company.—Rio Grande Bridge. Length: .23 mile. Amount of rental: \$1,000 per month.

Galveston, Harrisburg and San A. Ry.—Termini: From Rio Grande bridge to El Paso. Length: 3.61 miles. Amount of rental: \$83.33 per mile per month.

Los Angeles and San Diego Railroad.—Termini: From Florence to Santa Ana. Length: 27.60 miles. Amount of rental: \$100 per mile per month and taxes.

Los Angeles and Independence Railroad.—Termini: From Los Angeles to Santa Monica. Length: 16.83 miles. Amount of rental: \$100 per mile per month and taxes.

Stockton and Copperopolis Railroad.—Termini: From Stockton to Milton; length, 30.00 miles. From Peters to Oakdale; length, 19.00 miles. Amount of rental: Principal and interest on \$500,000 thirty-year bonds at 5 per cent and net earnings to apply on floating debt of Stockton and Copperopolis Railroad Company.

Amador Branch Railroad.—Termini: From Galt to Iowa City. Length: 27.20 miles. Amount of rental: \$3,500 per month and taxes.

Berkeley Branch Railroad.—Termini: From Shell Mountain to Berrymans. Length: 3.84 miles. Amount of rental: \$300 per month and taxes.

California Pacific Railroad.—Termini: From Vallejo Junction to Vallejo; length, 2.00 miles. From Vallejo to Sacramento; length, 60.39 miles. From Davisville to Knights Landing; length, 18.13 miles. From Napa Junction to Calistoga; length, 34.48 miles. Amount of rental: \$50,000 per month and taxes.

Northern Railway.—Termini: From Port Costa to Suisun; length, 17.33 miles. From Oakland to Martinez; length, 35.56 miles. From Woodland to Willows; length, 64.25 miles. From Willows to Tehama; length, 36.49 miles. Amount of rental: \$40,000 per month.

San Pablo and Tulare Railroad.—Termini: From Martinez to Tracy. Length: 46.51 miles. Amount of rental: \$13,800 per month.

Sacramento and Placer Railroad.—Termini: From Sacramento to Brighton. Length: 5.64 miles. Amount of rental: \$600 per month.

Union Pacific Railroad.—Termini: From Ogden to five miles west of Ogden. Length: 5.00 miles. Amount of rental: Same rate per mile as earned by Union Pacific Railway on road operated by itself.

Total length, 1,558.85 miles.

Southern Pacific of California, Col. Div.—Termini: From Mojave to Needles. Length: 240.13 miles. Amount of rental: \$125 per mile per month. (Colorado division was transferred to Atlantic and Pacific Railroad Company on October 1, 1884.)

Total length, 1,798.98 miles.

240 DEFENDANTS' EXHIBIT (ESHLEMAN) No. 25, MARCH 13, 1915.

(Decisions of the Railroad Commission of the State of California, Volume II, January 1, 1913, to June 30, 1913; pages 233 to 247.)

Decision No. 477.—In the matter of the application of Central Pacific Railway Company, Southern Pacific Railroad Company, and Southern Pacific Company for authorization to make a lease of a certain railroad; to make a sale of a certain railroad; to make a contract for the joint use and possession of a certain railroad; to make a contract for running and trackage rights over a certain railroad; and to make a contract for the joint use of certain railroad terminals.

Application No. 409. Decided February 24, 1913.

* * * * *
McCutchen, Olney & Willard and W. W. Cotton for Central Pacific Railway Company.

Wm. F. Herrin and Guy V. Shoup for Southern Pacific Company and Southern Pacific Railroad Company.

241 Chas. S. Wheeler and Allan P. Matthew for Western Pacific Railway Company.

Robert T. McKisick, city attorney, for city of Sacramento.

Ben F. Woolner, city attorney, for city of Oakland.

Seth Mann for San Francisco Chamber of Commerce.

REPORT OF THE COMMISSION.

On February 17, 1913, the railroads herein mentioned applied to this commission for its approval of five certain proposed transactions hereinafter more specifically referred to. On the second day of December, 1912, the Supreme Court of the United States, in the case of United States vs. Union Pacific Railroad Company, Southern Pacific Company et al., rendered a decision declaring the ownership by said Union Pacific Railroad Company (hereinafter referred to as the Union Pacific) of certain shares of the capital stock of the Southern Pacific Company (hereinafter referred to as the Southern Pacific) to be a combination in restraint of trade and decreeing that said Union Pacific should dispose of said stock of the Southern Pacific, and likewise providing for an injunction against the voting of the stock of the Southern Pacific by the Union Pacific and prohibiting the payment of any dividends upon said stock of the Southern Pacific.

242 In order to better understand the issues before this commission a brief review of the history of this case is advisable.

Heretofore the Southern Pacific had secured all of the stock of Central Pacific Railway Company (hereinafter referred to as the Central Pacific), Central Pacific Railroad Company, Southern Pacific Railroad Company, and various other lines of railway within the States of California, Nevada, Utah, Arizona, and New Mexico by which ownership the said Southern Pacific secured control of a line of railroad from El Paso to San Francisco and from Ogden to San Francisco. Thereafter the Union Pacific, by securing control of 46 per cent of the stock of the Southern Pacific, secured what amounted to actual control of the Southern Pacific, thereby placing the Union Pacific in a position so that at the time of the bringing of the suit in question it had actual control of a line of railroad from Omaha to San Francisco, comprising the lines of the Union Pacific and the Central Pacific, a second line of railroad from El Paso to San Francisco, operated by the Southern Pacific, a third line of railroad from Salt Lake to Los Angeles, operated by the San Pedro

Los Angeles and Salt Lake Railway Company, and a fourth line of railroad from Granger, Wyoming, and Ogden, Utah to Portland, Oregon, including all of the lines heretofore described.

The Supreme Court of the United States in the case of United States of America vs. Union Pacific Railroad Company, heretofore referred to, held that the dominance by the Union Pacific of the lines of the Southern Pacific constituting the so-called Sunset route from El Paso to San Francisco, and the route from Ogden to San Francisco, brought about the ownership or dominance by the same agency of two competing transcontinental lines, thereby bringing about a combination in restraint of trade in violation of the so-called Sherman Anti-Trust Act. As has already been said, the court decided that to destroy such combination the Union Pacific should divest itself of its ownership of Southern Pacific stock, amounting to the aggregate amount of \$126,650,000 par value.

In accordance with such decision the various companies have agreed upon a certain agreement (hereinafter referred to as the agreement), which has been filed with this commission and in part approved by the Attorney General of the United States. This agreement, in addition to providing for the sale of the stock of the

244 Southern Pacific held by the Union Pacific to the stockholders of the Union Pacific and the Southern Pacific in proportion to one share of this stock owned by the Union Pacific to each four shares of Union Pacific stock, and one share of said Southern

Pacific stock to each three shares of Southern Pacific stock owned by stockholders other than the Union Pacific, provides also for the sale by the Southern Pacific of the stock of the Central Pacific theretofore acquired by said Southern Pacific. This provision, the evidence shows, is the result of the suggestion of the Attorney General of the United States, he having apparently taken the position that the ownership by the Southern Pacific of the Central Pacific stock constitutes the same kind of prohibited act under the Sherman Anti-Trust Act as the ownership by the Union Pacific of Southern Pacific stock brought about. Admittedly, however, the provision of the agreement requiring the sale of the stock of the Central Pacific by the Southern Pacific is in excess of the requirements of the decree of the Supreme Court of the United States. The only portion of that decree which relates at all to a relationship between the Union Pacific and the Central Pacific is that which provides that the decree shall not prevent "the Central Pacific connection from Ogden to
245 San Francisco and thereby to control that line to the coast, thus affecting such a continuance of the Union Pacific and Central Pacific as is contemplated by the acts of Congress under which they were constructed." The acts of Congress referred to provide that the Central Pacific and the Union Pacific shall be operated and used for all purposes of communication, travel, and transportation, so far as the public and Government are concerned, as one connected continuous line (12 Statutes at Large, 489-495, enacted July 1, 1862), and to afford and secure to each equal advantages and facilities as to rates, time, and transportation without any discrimination of any kind in favor of the road or business of any or either of said companies or adverse to the road or business of any or either of the others (31 Statutes at Large, 356, enacted July 2, 1864).

The only thing provided in the agreement which was in accordance with the positive admonition of the Supreme Court is the sale by the Union Pacific of the stock of the Southern Pacific. Everything else provided in the agreement is, in our judgment, in excess of the requirements of the Supreme Court; but it is presupposed in the agreement that the design of the Attorney General of the United States was to bring about at the same time the dissolution of
246 the Southern Pacific and Union Pacific and the Southern Pacific and the Central Pacific in accordance with the suggestion of the Supreme Court hereinbefore referred to, which suggestion, however, went merely to an outlet for the Union Pacific over the lines of the Central Pacific to the coast, in accordance with the original plan of Congress as laid down in the statutes heretofore referred to, and did not in any way necessitate the sale by the Southern Pacific of all the Central Pacific feeders within this State.

The agreement presented to this commission, a part of which requires the approval of this commission and a part of which does not contemplate:

First. The sale by the Union Pacific of the stock of the Southern Pacific heretofore referred to.

Second. The sale by the Southern Pacific to the Union Pacific of the Central Pacific stock held by the Southern Pacific.

Third. The cancellation of the leases of the Central Pacific and allied lines held by the Southern Pacific.

Fourth. The lease for 999 years by the Central Pacific of its line of railroad from Tehama, California, to the Oregon line to the Southern Pacific Railroad Company at an annual rental of 5 per cent upon the value of such line from Tehama to the Oregon line as determined by a method which will hereinafter be discussed.

Fifth. The sale by the Central Pacific to the Southern Pacific Railroad Company of the line of railroad, now partly completed from Weed, in Siskiyou County, California, to Natron, Oregon, at a valuation to be determined as hereinafter provided.

Sixth. The lease for 999 years by the Southern Pacific and the Southern Pacific Railroad Company to the Central Pacific of its line of railroad from Sacramento by way of Benicia to Oakland at an annual rental of 2 1/2 per cent upon the value of said line to be determined in a manner hereafter described. This lease is to give to the lessee an equal joint use with the Southern Pacific Company of said line, and no other line is to be admitted to said use without the permission of said Central Pacific.

Seventh. The lease for 999 years by the Southern Pacific and Central Pacific to one another of the joint use of their respective terminals, including industry tracks, at all junctions of their respective lines within city limits.

Eighth. The lease for 999 years by the Southern Pacific Railroad Company and the Southern Pacific to the Central Pacific of trackage and running rights over the lines of the former companies between Redwood City and San Francisco, for through freight trains only, at an annual rental of 5 per cent upon the valuation, to be determined as hereinafter set out.

The entire consideration for these various trades, aside from the annual rental provided, is to be the assumption by the Union Pacific of approximately two hundred million dollars of bonded indebtedness of the Central Pacific and the payment to the Southern Pacific of about \$104,000,000.

We, of course, accept without question the mandate of the Supreme Court, and it is our desire to exercise whatever authority we have in this matter in a manner which will bring about the design of the

Supreme Court to produce active and actual competition between these two transcontinental lines. However, over the sale of the stock of the Southern Pacific by the Union Pacific as ordered by the Supreme Court we, of course, have no authority. Neither have we power under the public utilities act to require or to prevent the sale of the stock of the Central Pacific, one foreign corporation, by the Southern Pacific, another foreign corporation, as provided for in the plan of the Attorney General. However, the representatives of both the Union Pacific and the Southern Pacific have testified that this plan as presented in the agreement must be carried out without substantial change, and we feel that the entire plan is one which should be considered by us with a view to determining whether or not the entire plan, which must be accepted or rejected under the circumstances herein presented, is one designed to bring about in good faith the result contemplated by the mandate of the Supreme Court.

We concede that the Attorney General in urging the sale of the Central Pacific stock by the Southern Pacific merely has in mind the fact that by the control of the Central Pacific by the Southern Pacific the latter company, a competing transcontinental line under the design of Congress, is controlling a part of this transcontinental line and thereby is in directly the same position as regards the Western or Central Pacific end of this line as the Union Pacific is with reference to the Eastern or Union Pacific end thereof. That the elimination of this condition does not require the sale of the stock of the Central Pacific by the Southern Pacific is plain. This, of course, is but one method of bringing about the result desired by the Attorney General. It is our opinion that this result could be equally well brought about by the sale to or long-term lease by the Union Pacific of the line of the Central Pacific from Ogden to Sacramento and thence, via Stockton, Niles, and Oakland, to San Francisco, being a portion of the continuous line referred to in 18 Statutes at Large, page 111, chapter 331 (June 20, 1874).

The plan presented to us in this agreement contemplates the control by the Union Pacific not only of a line to the coast, but also of many important feeders owned by the Central Pacific in northern and central California. As a matter of fact, the acquisition of the entire Central Pacific holdings by the Union Pacific will give it an entry into all of the important centers of population in California north of the Tehachapi Mountains, while its control by stock ownership of the San Pedro, Los Angeles and Salt Lake Railroad Company from Salt Lake to Los Angeles, with the connections of the Oregon Short Line from Salt Lake to Ogden, gives it an entry into

the region south of the Tehachapi Mountains, and its ownership of the Oregon Short Line and the Oregon Railway and Navigation

Company gives it access to Portland and other Oregon points.

251 The Southern Pacific, on the other hand, while it is left with its coast line from San Francisco to Los Angeles, will, in our opinion, if this agreement is consummated, compete at a disadvantage at all points north of the Tehachapi Mountains with the Union Pacific-Central Pacific line. In fact, it is in evidence in this case from the testimony of the representatives of the Southern Pacific itself that that line will be excluded from practically all of the deciduous fruit business in California, as well as a major portion of the dried fruit business and a large portion of the citrus fruit business originating at points north of the Tehachapi Mountains.

We do not believe it necessary to the determination of the questions that are now presented to us to present in detail the traffic conditions which we consider will be brought about if the rearrangement contemplated by this agreement is consummated. Mr. Sproule, president of the Southern Pacific, testified that 47 per cent of the traffic carried by the Southern Pacific as it now exists, controlling as it does the Central Pacific to Ogden, passes through the El Paso gateway. This, of course, includes practically all the Southern Pacific's traffic originating south of the Tehachapi Mountains and all of the

252 traffic moving by water from Galveston over the Southern Pacific and Gulf line, and necessarily includes but a small percentage of the business produced north of the Tehachapi Mountains. Under present conditions the Southern Pacific, having regard solely to traffic convenience, carries by way of its Sunset Route only a comparatively small amount of freight which originates at points north of the Tehachapi Mountains. It would appear that under the circumstances of this case the traffic will largely move over the most convenient and expeditious route. Such being the case, we are justified in concluding that for most of the traffic originating north of the Tehachapi Mountains the Sunset Route is a less convenient route than the route by way of Ogden gateway, and if this conclusion is correct the Southern Pacific will compete at a disadvantage for most of this traffic when the ownership of the lines through the Ogden gateway and the El Paso gateway is in the hands of competing owners. Thus if the Union Pacific secures control of the Central Pacific, with its feeders as far south as Goshen and into practically all of the important commercial centers in northern and central California, the Southern Pacific will be placed in the position of the inferior road at all of these points, while if the Union Pacific

253 were to secure merely the control of the main line of the Central Pacific from Ogden to San Francisco the condition

would be reversed and the Union Pacific-Central Pacific line would compete at a disadvantage or be compelled to build additional feeders.

We do not pretend to say, nor do we consider it necessary to decide, how serious an impairment of the Southern Pacific will be brought about by the securing of the Central Pacific main line and feeders by the Union Pacific, but we are of the opinion that the present commanding position of that road can not be maintained under the contract which is presented to us for approval, and that there is room for grave fear that if the agreement is carried out this State will, instead of securing two strong competing lines, secure one dominant line and one much impaired line.

The desire of the Supreme Court and the Attorney General to produce active competition between these two transcontinental lines, of course, is founded in the belief that such competition will produce advantageous results to the shippers. We do not believe, however, that any appreciable reduction of transcontinental rates will be brought about by the unmerging of these lines, particularly under the terms of the agreement here under consideration. If, however, active and bona fide competition is produced between these lines there will be more striving after business and, consequently, probably some improvement in service—how great it is impossible to determine. We do not believe that the improvement in service will be very marked, because of the fact that the freight east and west through both the Ogden and El Paso gateways is at the present time carried in active competition with two other transcontinental lines, namely, the Atchison, Topeka and Santa Fe Railway Company and Western Pacific Railway Company.

Believing as we do that the plan here under consideration will not substantially benefit the shippers of the transcontinental freight, either in rates or in service, it is well to consider what, if any, effect will be the natural result of this arrangement upon local traffic. At the present time the local lines of the Southern Pacific and the Central Pacific form one system within this State, reaching from Oregon to the Mexican line, and from Yuma and a point near Reno on the east. All local lines of these two systems are now under the control of one agency and operated as a unit. The result of the reorganization plan as set forth in this agreement will be the substitution as to a great part of this territory of two agencies to perform the work now performed by one.

While the representatives of both the Union Pacific and the Southern Pacific state positively that it is contrary to their policy to permit the reorganization scheme to increase the rates, or to interfere with the service locally within the State, yet we can not refrain from

observing that this result usually follows upon a substitution of two agencies in the performance of a service theretofore performed by one. We invariably have it urged upon us in rate controversies before the commission where rates are to be made over two connecting lines that the joint movement over two connecting lines is more expensive to the carriers in the aggregate than a single movement over one line between the same points. Therefore, regardless of the present disposition of the parties hereto, we feel that serious consideration must be given by the commission to the possibility or probability of applications which may hereafter be made by carriers to increase rates in this State in cases where, as the result of the consummation of this agreement, points now upon one line may, by

reason of the dismemberment of the Southern Pacific lines in
256 this State be found located one solely on the Southern Pacific and the other solely on the Central Pacific.

It is our disposition to believe that it would be better for the local business within this State if the local lines now controlled by the Southern Pacific could remain under the control of one agency and not be separated and given over to the control of two. This conclusion, in conjunction with the opinion we have already expressed that the advantage to shippers as to transcontinental freight will be negligible if the provisions of this contract are carried out, leads us to suggest that it would be better to adopt the other method already suggested of bringing about the design of Congress in providing that the Central Pacific and the Union Pacific should be one continuous transcontinental line, namely, by the sale or long-term lease of the line of the Central Pacific from Ogden to Sacramento to the Union Pacific and the provision for a trackage right from Sacramento to bay points for the Union Pacific and the retention by the Southern Pacific of the remainder of the Central Pacific system.

Having given our views upon that portion of the contract, which, while involved in the entire plan, does not specifically require our approval, we shall now consider those matters for which our approval is required.

257 The lease by the Central Pacific of its line of road from Tehama to the Oregon line, to the Southern Pacific Railroad Company for 999 years, we believe, is unobjectionable, and should meet with our approval, except as to the method of determining the rental thereof. Inasmuch as the same fault which we find with the method here involved is inherent in the method of determining the rentals in each instance and the sale price of the road from Weed to Natron, it is well for us at this time to point out our objection and to suggest a remedy.

The agreement provides that the Southern Pacific shall pay to the Central Pacific an annual rental of 5 per cent of the value of the line

to be leased, the value to be agreed upon by the parties, if possible, and if not, to be determined by arbitration according to a method laid down in the agreement.

This commission has heretofore held that in cases involving the sale by a public utility of any portion of its property devoted to the public use, or the rental of such property, the valuation shall be subject to this commission's approval, and we see no reason for departing from this principle in this case. While we do not
258 disapprove of the plan of arriving at the valuation outlined in the agreement as a preliminary ascertainment of such value, still for such value to have final effect it will be necessary for this commission in each instance to pass upon it. The observation applies to all cases of sale or lease herein considered.

In the Tehama-Oregon line transaction we do not object to the term of 999 years, constituting, of course, practically a perpetual lease, because we conceive this to be a case wherein a sale of this property would meet with our approval, and where such sale is only prevented by the outstanding bonded obligations rendering a sale impracticable.

We likewise approve of the provision for the sale of that portion of the Weed-Natron branch which is located in California, except as to the valuation, as heretofore stated. The same may be said as to the Redwood-San Francisco lease, except as to the term thereof. Except in those cases where we would approve a sale of the property and a sale is only prevented by the outstanding obligations which are liens upon the property, we think a perpetual lease is not warranted. In other words, except in those cases where we would approve a sale we will not approve a perpetual lease. This is equally
259 applicable to the term of 999 years provided in all of the other leases which are hereafter to be considered.

The commission is, however, willing to permit the leases in this case to run for a period of fifty years, and for the further period until the commission or other competent State authority, after notice and hearing, directs their cancellation or modification, whereupon such cancellation or modification shall be made.

The city of Sacramento was represented at the hearing by its city attorney, who stated that the city was at present in litigation with the parties hereto, or some of them, in the matter of city franchises which the city claims have expired, and that the city expected that additional litigation as to other city franchises would soon be initiated. The city attorney requested that the commission insert in its order a condition to the effect that no rights of the city should be prejudiced by the order. The city attorney of Oakland made a similar request. The attorneys for the applicants herein agreed

that such condition might be inserted, and the commission will so, although it is of the opinion that no act on its part could be construed to revive an expired city franchise or otherwise prejudice the cities with respect to such franchise.

260 The provision for the lease of the Benicia short line and the joint use of terminals, including industry tracks, are the ones to which we find the most serious objection. The agreement contemplates that the Southern Pacific shall grant to the Central Pacific for the Union Pacific the equal joint use and possession of the short line from Sacramento to Oakland via Benicia at an annual rental, and that no additional company may use the tracks so leased unless it has first secured the written consent of both the Southern Pacific and the Central Pacific. In other words, these two companies are to have the use of these very desirable tracks to the exclusion of any other railway company, unless both the Southern Pacific and the Central Pacific concur in letting in the stranger. We recognize fully that this property now belongs solely to the Southern Pacific Railroad Company and is operated solely by the Southern Pacific. Nevertheless, the grant by the Southern Pacific of the use of its tracks to one independent competitor (the Central Pacific), while refusing to grant the same rights to another independent competitor (the Western Pacific), would work a discrimination which the welfare of this State does not permit and which this commission will not sanction.

261 If the Southern Pacific is going to throw its property open to one of its several independent competitors, it must play fair with the others and permit its use by them also on terms which shall provide for a just compensation to the extent to which the capacity of the property reasonably permits. If the present plan of a sale by the Southern Pacific of the Central Pacific stock to the Union Pacific be abandoned and in lieu thereof the Union Pacific shall buy the line of the Central Pacific between Ogden and Sacramento or secures long-term lease thereof, with lease or trackage rights thence into San Francisco, other considerations might arise. It might then be held that the Union Pacific would be acting in accordance with the plan of Congress to secure a connecting line of railway via the Union Pacific and the Central Pacific to the coast, and that the Central Pacific was not acting voluntarily in granting the trackage rights to enable the Union Pacific to reach the coast from Sacramento. This effect of the Federal statutes heretofore referred to would confine the right to an outlet for the Union Pacific to the Stockton-Niles route.

While there is some argument in favor of the joint use of certain terminals by the Southern and Central Pacific

262 the exclusion of other lines, particularly as affects such

terminal as the Oakland Pier, still we do not believe that under all the circumstances of this case the provision that only by the joint approval of these companies are these terminals, including industry tracks, as we interpret the agreement, to be used by any other company, is justified. A condition concerning this matter will be inserted in the order.

We are not unmindful of the fact that, as testified by both Judge Lovett and Mr. Sproule, these companies are more or less under duress to contract. On the one hand the stock of the Southern Pacific owned by the Union Pacific is in the hands of the court for sale, and if an arrangement is not consummated before ninety days shall have elapsed after the decision of the court, this stock is to be placed in the hands of a receiver to be sold as the court directs. It is testified that the Attorney General is threatening proceedings against the Southern Pacific if it does not divest itself of control of its alleged competing line, the Central Pacific, and we appreciate the desire of the parties to bring about a solution of their troubles which will result in as little financial loss to them as possible, yet
263 we believe it is our duty to have in mind the effect of any arrangement which may be designed upon not only the contracting parties here, but the public. As we have already indicated, we do not believe the sale of the stock of the Central Pacific is necessary to bring about the result desired by the Supreme Court, or even by the Attorney General, but if Federal authorities acting within their jurisdiction within this matter, which is wholly without our jurisdiction, shall decide that the sale of this stock must be made, then we do not feel that it will be possible for us to protect the public beyond that protection which may be accorded by the imposition of conditions specified in the order herein, which conditions, while not designed to be oppressive to the contracting parties, have as their object the restoration of real competition in local traffic in addition to the competition in transcontinental traffic which is designed by the Attorney General.

We submit herewith the following form of order:

ORDER.

Central Pacific Railway Company, Southern Pacific Railroad Company, and Southern Pacific Company having filed with this commission their application for an order authorizing (a) the
264 lease by the Central Pacific Railway Company to the Southern Pacific Railroad Company of its line of railway between Tehama, California, and the California-Oregon boundary line; (b) the sale by the Central Pacific Railway Company to the Southern

Pacific Railroad Company of so much of its line of railway between Weed, California, and Natron Station, Oregon, as lies within the State of California; (c) the grant by the Southern Pacific Railroad Company and the Southern Pacific Company to the Central Pacific Railway Company of the equal joint use and possession of the line of railway of the grantees between Sacramento and Oakland via Benicia and Port Costa, at an annual rental; (d) the grant by the Southern Pacific Railroad Company and the Southern Pacific Company to the Central Pacific Railway Company of trackage and running rights between Redwood City and San Francisco for the operation of through freight trains only, at an annual rental; and (e) the grant by the Southern Pacific Railroad Company (or the Southern Pacific Company) to the Central Pacific Railway Company and the grant by the Central Pacific Railway Company to the Southern Pacific Railroad Company (or the Southern Pacific Company) of the joint and equal use of all terminals, including industry tracks at all junctions of their respective lines within city limits, at annual
265 rentals, all as set forth in said application on file with this commission; and a public hearing having been held on said application, and the Western Pacific Railway Company having appeared in opposition to the granting of said application, and the commission being fully advised in the premises, we hereby find as a fact that public convenience and necessity will not be served by the granting of said application except on the conditions hereinafter specified, basing our order on this finding of fact and on the further findings contained in the opinion which precedes this order,

It is hereby ordered that said application be, and the same is hereby, granted, but only on the following express conditions, and not otherwise, to wit:

1. The price at which the property covered by the agreement between the applicants hereto shall be sold or the valuation on which its rental shall be based, as the case may be, shall be only such price or valuation as shall first have been formally submitted to and approved by the railroad commission. This condition shall not be held to be a condition precedent to the consummation of said agreement, but
such sale price and rentals shall not be paid or become due un-
266 til such approval of the railroad commission has been secured.

2. The rates and fares which may be filed with the railroad commission by any party or parties to said agreement, between points within the State of California, growing out of the altered conditions resulting from said agreement, shall in no case exceed the rates and fares in effect between said points on the twenty-fourth day of February, 1913, over the lines now operated by the Southern Pacific Company. Within sixty days from the effective date of said agreement the railroad parties hereto shall file with this commission

joint rates and fares for the transportation of freight and passengers between all points in the State of California, which said joint rates and fares shall not exceed the present rates and fares of the Southern Pacific Company between the said points now on file with this commission.

3. The term of each 999-year lease referred to in the agreement, other than the lease of the line of railway between Tehama and the California-Oregon line, as to which the term is approved, shall be fifty years and for such further period of time thereafter, and upon such terms as the railroad commission, after notice and hearing, shall have determined to be reasonable.

267 4. In the event that the Southern Pacific Company and the Southern Pacific Railroad Company hereafter grant to the Central Pacific Railway Company, under the terms of said agreement or otherwise, or any other line, the use or possession of the line of railway known as the Benicia short line, said Southern Pacific Company and Southern Pacific Railroad Company shall grant a similar privilege to any other competing line of railway which may make application therefor, for an equitable compensation, to the extent to which said line may reasonably be used. If the parties can not agree as to the terms of the use or possession or the reasonableness of being admitted to said use or possession, they shall make formal application to the railroad commission, which will thereupon, after proceedings duly had, determine the question involved.

5. In the event that any of the companies parties to said agreement shall grant, the one to the other, or to any other railroad company, the use or possession of any of the terminals, including industry tracks, specified in said agreement, said company or companies granting such use or possession shall grant a similar privilege to any other competing line of railway which may make application therefor, for an equitable compensation, to the extent to which such facilities may reasonably be used. In the event
268 that the parties can not agree, the same proceedings shall be had as in the preceding paragraph. This condition, however, may be modified by the commission in the event of terminal facilities now jointly used by any two of the parties to said agreement, in such cases as the commission after a hearing shall find to be reasonable.

6. Neither this order nor any act done in pursuance of its authority shall be construed as extending, reviving, or in any way affecting the term of any franchise or permit or as prejudicing in any way the rights of the State of California or of any city, town, county, or other political subdivision thereof.

7. This order shall not become effective for any purpose unless and until all the parties to said agreement shall first have filed with the railroad commission a stipulation under the hand and seal of said

applicants, duly authorized by the board of directors or other competent governing body of each thereof, agreeing for themselves and their respective successors and assigns, to be bound by and comply in good faith with each condition of this order.

Dated at San Francisco, California, this twenty-fourth day of February, 1913.

269 DEFENDANT'S EXHIBIT (ESHELMAN) No. 26, MARCH 13, 1913.

(Decisions of the Railroad Commission of the State of California, Volume II, January 1, 1913, to June 30, 1913; pages 248 to 254.)

Decision No. 478.—In the matter of the application of Central Pacific Railway Company, Southern Pacific Railroad Company, and Southern Pacific Company for authorization to make a lease of a certain railroad; to make a sale of a certain railroad; to make a contract for the joint use and possession of a certain railroad; to make a contract for running and trackage rights over a certain railroad; and to make a contract for the joint use of certain railroad terminals.

Application No. 409. Decided February 24, 1913.

* * * * *
McCutchen, Olney & Willard, and W. W. Cotton for Central Pacific Railway Company.

Wm. F. Herrin and Guy V. Shoup for Southern Pacific Company and Southern Pacific Railroad Company.

270 Chas. S. Wheeler and Allan P. Matthew for Western Pacific Railway Company.

Robertson T. McKisick, city attorney, for city of Sacramento.

Ben F. Woolner, city attorney, for city of Oakland.

Seth Mann for San Francisco Chamber of Commerce.

REPORT OF THE COMMISSION—SUPPLEMENTAL OPINION.

Inasmuch as we understand the imposition of the conditions set out in the main opinion and order will result in the rejection of the contract in its entirety, thus rendering further negotiations between the parties necessary, it is proper to set out specifically what arrangements we will approve and the reasons therefor.

The Supreme Court orders one act only, aside from the temporary expedients incidental to the carrying out of the decree, namely, the sale by the Union Pacific of the Southern Pacific stock. It permits, however, to the Union Pacific "the Central Pacific connection from Ogden to San Francisco * * *, thus effecting such a continuity

of the Union Pacific and Central Pacific as was contemplated by the acts of Congress under which they were constructed." (United States vs. Union Pacific Railroad Company et al.) Recognizing the importance of such a suggestion from the Supreme Court, we will treat the decree as directing such an outlet over the Central Pacific as here suggested and will assume that it is the duty of any inferior tribunal acting within its jurisdiction to exercise any discretion which it may have in such a manner as to effectuate this design of the Supreme Court, as well contained in its suggestion as required by its command. Therefore, we proceed upon the theory that the Union Pacific is to be divested of control of the Southern Pacific by such disposition of the Southern Pacific stock as will make these two lines bona fide independent lines, and that the Union Pacific is to be invested with an outlet to the coast.

The Attorney General of the United States has recognized these two requirements, but he has added an additional requirement, admittedly not commanded or suggested in the decree and which could not be directly brought about except by a new proceeding in the Federal courts prosecuted to a decree favorable to his contention in the Supreme Court of the United States. This is the requirement that the Southern Pacific Company sell the stock of the Central Pacific. We assume, however, that the insistence by the Attorney General upon the sale by the Southern Pacific Company of the stock of the Central Pacific held by it is only incidental to his main design, which is to prevent the control by the Southern Pacific Company, which owns the Sunset line by way of the El Paso gateway, of a line at least in part competitive therewith to the Ogden gateway. We can not believe that the plan of the Attorney General to bring about his desired result makes necessary anything more than the surrender by the Southern Pacific Company of the Central Pacific main line and its exclusion from any interest therein. Certainly the main design does not necessitate the surrender by the Southern Pacific to its present dominant ally, but competitor to be, of its most important feeders and all of its advantages secured by reason of its being first in the field. Neither does it contemplate the admission of this formidable rival to the exclusion of any other rival or ally to the joint use of one of its advantageous short lines nor to the exclusive joint use of its important terminals. Neither do we think the Attorney General desires to upset local traffic conditions by breaking a well-built system of local lines well suited to serve the local needs of the people of this State into two disassociated sets of branches, some of which begin and end nowhere if we have reference to their separate ownership. These local lines

are the result of many years of growth, and anyone at all familiar with railroad conditions in this State knows that they can be much more conveniently and economically managed as one local system than by the substitution of two incomplete local systems and two agencies to perform the service now being carried on by one complete system in charge of one agency.

That the Attorney General has in view the bringing about of such result and is not insisting upon any particular method of accomplishing such result is, we believe, a fair inference. We are confirmed in this by his attitude expressed by telegraph on the first day of the hearing of this case as to the exclusive use of the Benicia cut-off and the terminals of the Southern Pacific by the Union Pacific.

We then conclude that all that the Attorney General adds to the two requirements of the Supreme Court is the one additional which contemplates the disposition by the Southern Pacific Company of its control of the main line of the Central Pacific, with which it is supposed to compete by the El Paso route, and that he is not committing to any particular method, and that his approval may be expected to any reasonable method of effectually accomplishing this result.

The essential elements of the plan of the Supreme Court as added to by the Attorney General are:

First. The sale of the Southern Pacific stock by the Union Pacific.

Second. The securing by the Union Pacific of an outlet to the coast over the Central Pacific line; and

Third. The surrender by the Southern Pacific Company of so much of the Central Pacific line as is necessary to prevent said Southern Pacific Company from controlling a line designed to compete with the El Paso route.

With the first requirement we have no direct official concern, but we invite the attention of the Attorney General and the court to the contention of the Western Pacific Railroad Company that the syndicate formed by Kuhn, Loeb & Company, the Union Pacific bankers, is in effect accomplishing by indirection what the Supreme Court refused to permit to be accomplished directly, viz., the purchase by the stockholders of the Union Pacific of the Southern Pacific stock. It is urged that this banking house and the syndicate formed by it are

controlled by the large stockholders of the Union Pacific, and that by making Southern Pacific stock an undesirable investment, the stockholders of the Southern Pacific Company will be deterred from buying and the Union Pacific controlled syndicate will thereby secure control of this stock, thus leaving the Union Pacific and Southern Pacific controlled by the same stockholders, an arrangement which the Supreme Court has already condemned.

The two other conditions, we believe, may be readily worked out together so as substantially to meet the requirement of the court and the Attorney General as well. If a lease similar in terms to the one agreed upon to the Tehama-Oregon line of the Central Pacific be made by the Central Pacific to the Union Pacific of the line from Ogden to Sacramento, including the line from Roseville to Tehama, freed from the objection already urged against the method of arriving at a value, this commission will approve such a lease. We see no reason why a flat price covering the value of this line can not be agreed upon since an exclusive lease for such a long time would be tantamount to ownership, or a lease with option to purchase when the bonded indebtedness admits, might be consummated. This arrangement would place the Union Pacific at Sacramento in a position in regard to an outlet to the coast different from that occupied
276 by any other line at that point. Under the acts of Congress providing for the construction of Union Pacific and Central Pacific, as construed by the Supreme Court of the United States, it is provided that the Union Pacific have an outlet over the Central Pacific to San Francisco. Such being the case, if the Central Pacific or its successor in interest gives to the Union Pacific access to San Francisco from Sacramento over the Central Pacific line between these two points, such agency will have done so not as a voluntary act, but as a requirement of Congress, and certainly can not be held as thereby subjecting itself to any penalty or disadvantage by reason of such act. Therefore, if the scheme which we have suggested is adopted and the Union Pacific secures exclusive control of the Central Pacific line from Ogden to Sacramento, it may likewise secure exclusive or joint control of the line from Sacramento to Oakland by way of Niles, because of the fact that this is the outlet of the Central Pacific referred to in the congressional acts and admitted to be such by the parties to this case. Therefore, under such conditions we will sanction an arrangement which puts the Union Pacific in entire or joint control with the Southern Pacific of the Central Pacific line from Sacramento by way of Niles to Oakland.

277 As regards the terminals, we are willing to permit the exclusive use by the Union Pacific of the joint use by it with the Southern Pacific of such terminals as are incident to this line of railroad from Sacramento, but not the facilities which are incident to any other line independent of this line.

Having secured by the method herein outlined an outlet to San Francisco over the line and in a way selected for it by Congress, the Union Pacific may not say that it finds itself in Sacramento in any different position as regards any other line from Sacramento to Oakland than is the Western Pacific or any other competing line, and

there is no more reason for giving it a right of way over a more advantageous line between Sacramento and Oakland even for an adequate consideration than there is for giving such a right of way to the Western Pacific or any other independent line. The only warrant for the position of the Union Pacific that it should be allowed to get to San Francisco is derived from the acts of Congress, which alone constitute it superior in this respect to other lines. The intentions of Congress having been effectuated by its admission to the union

of the line designated by Congress, it may not urge as a right
278 its admission either to the joint or several use of another line.

This conclusion has led the commission in its main opinion and order to impose as a condition upon the use by the Union Pacific of the Benicia short line the right under similar terms of any other road to use the same.

We have endeavored herein to point out a method which we believe would satisfy the command and suggestion of the Supreme Court and the desire of the Attorney General, and have stated our reasons for recommending this arrangement. If, however, the Attorney General and the Circuit Court in its discretion shall hold that the Southern Pacific shall sell all of the Central Pacific stock to the Union Pacific thereby giving to the Union Pacific through stock ownership not only the main line of the Central Pacific from Ogden by way of Sacramento and Niles to Oakland, but also the important feeders from such line, we shall not be disposed to withhold our approval to the other provisions of the agreement presented to us on the sole ground that the Federal authorities have adopted the stock ownership plan for the transfer of this property with its attendant disadvantages and not the plan which we have recommended, which we believe
from a careful investigation of the conditions is preferable

279 from the standpoint of the public. In other words we have deemed it best to point out to the Federal authorities our objection to the control of the entire Central Pacific system by the Union Pacific and have suggested an alternative plan which will meet such objections, but if after having considered our proposal the Federal authorities, acting within their jurisdiction, adhere to the original plan of the Attorney General we will waive this objection, because, while we consider it important, we do not consider it entirely essential. Particularly do we reach this conclusion by reason of the fact that this commission has the power to regulate local rates and service and the admitted intention of the parties not to attempt to use the separation of these lines as a means and excuse for increasing the rates and impairing the service.

If the Union Pacific, under the permission of the Attorney General and the Federal court, is permitted to purchase the stock of the

Central Pacific, then we will limit it to the line between Sacramento and Oakland, to which this ownership entitles it and the terminals incident thereto. If it is accorded any other terminals or any other route by the voluntary act of the Southern Pacific Company, 280 we shall insist upon the conditions which we have imposed in the main opinion and order. We therefore recommend the arrangement which we have suggested for the acquirement by the Union Pacific of the main line of the Central Pacific from Ogden by way of Sacramento and Niles to Oakland and the branch line from Roseville to Tehama; but if the Attorney General and the circuit court, in spite of such recommendation, desire that the Union Pacific secure the stock of the Central Pacific, thereby securing not only this main line, but the branches, our approval will be given likewise to the following arrangements, but only on the conditions outlined in the main opinion and order.

We will approve, if application is made therefore, the arrangement outlined in the main decision respecting the lease of the line from Tehama to the Oregon State line, the sale of the Weed line, the lease of the Bay Shore cut-off, the lease of the Benicia short line from Sacramento to Oakland, the lease of the terminals, including industry tracks, specified in the agreement, the latter to be made definite and specific hereafter.

We recognize that some of the facilities of the Central Pacific 281 and Southern Pacific are so connected and interwoven that it is practically impossible to require their separation, and the commission will be disposed to recognize any necessities which may arise from such cause; but if the use of any other facilities, such as industry spurs and terminal facilities of a similar character, be accorded by the Southern Pacific to the Central Pacific or the Central Pacific to the Southern Pacific, then the voluntary according of such use will carry with it as an annexed condition the necessity of according a similar privilege to any other line similarly situated and willing to pay a reasonable compensation therefor. And it shall only be necessary in each instance for the line desiring these privileges to be accorded to it to secure the consent of the owner of such facilities and not the consent of the other company which has been voluntarily admitted to the use.

Dated at San Francisco, California, this 24th day of February, 1913.

282 DEFENDANTS' EXHIBIT (MACALLISTER) No. 27, APRIL 15, 1915.

The Central Pacific Railway Company to the Central Trust Company
of New York, trustee.

First refunding mortgage. Dated August 1, 1899.

[\$50,000 internal-revenue stamps affixed and canceled.]

An indenture, made the first day of August, one thousand eight hundred and ninety-nine, by and between the Central Pacific Railway Company, a corporation of the State of Utah (hereinafter called the "Railway Company"), party of the first part, and the Central Trust Company of New York, a corporation of the State of New York (hereinafter called the "Trustee"), party of the second part:

Whereas the Railway Company, party of the first part, is a corporation created by and existing under and by virtue of the
283 laws of the State of Utah and holding franchises under acts of Congress of the United States, and now owns lines of railroad extending from a point about five miles west of Ogden, in the State of Utah, by way of Sacramento, in the State of California, to San Jose, in said last-mentioned State, and from Niles to Oakland and Lathrop to Goshen, all in the State of California, and from Roseville, in the State of California, to the California and Oregon State boundary, besides equipment and terminals therefor and used in connection therewith; and

Whereas certain portions of the said lines of railroad owned by the said Railway Company are subject to the liens of certain mortgages severally and respectively securing bonds now outstanding (hereinafter called "outstanding old bonds") for the several aggregate principal sums following, to wit:

(a) The Central Pacific Railroad Company of California first-mortgage bonds secured by mortgage dated July 25, 1865, of the several series and for the amounts and now matured or maturing at the dates hereinafter stated, respectively, viz:

284	Series.	Amount.	Date of maturity.
	Series A.....	\$2, 995, 000	Matured.
	B.....	1, 000	Matured.
		999, 000	December 1, 1899.
	C.....	4, 000	Matured.
		996, 000	December 1, 1899.
	D.....	4, 000	Matured.
		1, 379, 000	December 1, 1899.
	Total.....	6, 378, 000	

(b) The Central Pacific Railroad Company of California first-mortgage bonds, secured by mortgage dated January 1, 1867, of the several series, and for the amounts and now matured or maturing at the dates hereinafter mentioned, respectively, viz:

Series.	Amount.	Date of maturity.
Series E.....	\$5,000	Matured.
F.....	3,990,000	June 1, 1900.
G.....	9,000	Matured.
H.....	3,990,000	June 1, 1901.
I.....	13,000	Matured.
285 H.....	3,985,000	June 1, 1901.
I.....	6,000	Matured.
I.....	3,993,000	June 1, 1901.
I.....	13,000	Matured.
I.....	3,498,000	June 1, 1901.
Total.....	19,502,000	

(c) The Western Pacific Railroad Company first-mortgage bonds, secured by mortgage dated July 1, 1869, of the several series and for the amounts and which matured at the date hereinafter mentioned, viz:

Series A for \$1,970,000, matured July 1, 1899.

B for 765,000, matured July 1, 1899.

Total... 2,735,000

(d) The California and Oregon Railroad Company and Central Pacific Railroad Company, successor, first-mortgage bonds, secured by mortgages dated January 1, 1868, and January 1, 1872, respectively, of the several series and for the amounts and maturing at the date hereinafter mentioned, viz:

Series A for \$5,982,000, maturing January 1, 1918.

B for 4,358,000, maturing January 1, 1918.

Total.. 10,340,000

(e) The Central Pacific Railroad Company first-mortgage bonds (San Joaquin Valley division), secured by mortgage dated October 1, 1870, for the amount of \$6,080,000, maturing October 1, 1900.

(f) The Central Pacific Railroad Company fifty-year five per cent bonds secured by mortgage dated April 1, 1889, to the amount of \$12,283,000, maturing April 1, 1939, of which bonds to the amount of \$2,038,000 are held as security for the land bonds next hereinafter mentioned.

(g) The Central Pacific Railroad Company land bonds secured by mortgage dated October 1, 1870, to the amount of \$2,134,000 and maturing October 1, 1900.

And whereas heretofore, and under date of February 1st, 1899, the said Central Pacific Railroad Company, in pursuance of a settlement agreement between the United States of America, the Central Pacific Railroad Company, and Messrs. Speyer & Co., dated February 1, 1899, entered into under the provisions of an act of Congress approved July 7th, 1898, executed its twenty promissory notes in favor of the United States of America for \$2,940,635.78 each, maturing on or before the expiration of each successive six months from the date thereof, which notes were secured by the lien reserved by the acts of Congress approved July 1, 1862, and July 2, 1864, and

the acts amending and supplementing the same, to secure the
287 indebtedness arising from the issue of bonds of the United

States to aid in the construction of the bond-aided railroads of the Central Pacific Railroad Company of California and Western Pacific Railroad Company, respectively, and are agreed to be secured by pledge of refunding bonds to be issued hereunder as hereinafter provided, upon the pledge of which refunding bonds as security therefor, the said lien is to be transferred to the Trustee of this mortgage as security for all the bonds to be issued thereunder.

And whereas the said Railway Company is about to issue its refunding bonds to an amount which shall not in any event exceed in the aggregate the principal sum of one hundred million dollars at any one time outstanding, and which shall bear interest at a rate not exceeding four per cent per annum, payable semiannually, and to secure the same by mortgage upon the lines of railroad, equipment, and terminals hereinafter described, with their appurtenances;

And whereas the issue of the said refunding bonds and the execution of said mortgage to secure the same has been duly authorized by the board of directors of said Railway Company, as per resolutions, copies of which are as follows:

“Resolved, That for the purpose of readjusting the in-
288 debtedness secured by liens upon the properties of the company, and for other corporate purposes, this company issue its bonds to be known as ‘First refunding mortgage gold bonds,’ to an amount which shall not in any event exceed in the aggregate the principal sum of \$100,000,000 at any one time outstanding. Such bonds shall bear date August 1st, 1899, in the case of coupon bonds, and of the time of their issue, in the case of registered bonds, shall become and be payable on the first day of August, 1949, in gold coin of the United States of the present standard of weight and fineness, and shall bear interest at a rate not exceeding four per centum per

annum, payable semiannually in like gold coin, on the first day of February and the first day of August in each year. Said bonds shall be issued either as coupon or registered bonds. The coupon bonds shall be for the principal sum of one thousand dollars or five hundred dollars each, and shall give to the holders the right to register the principal thereof, and also the right to convert the same into fully registered bonds. The registered bonds without coupons shall be each for the principal sum of one thousand dollars, or such multiples thereof as the company by resolution of its board of directors may from time to time prescribe, and may be issued originally either as registered bonds or in exchange for coupon bonds for an equivalent sum. Such bonds, whether coupon bonds or registered bonds, shall be issued as shall be determined by the action of the board of directors or the executive committee of the company at such times and to such amounts as the purposes for which they are to be issued may require. When issued such bonds shall be signed by the president or any vice president of the company, and the corporate seal shall be thereunto affixed and attested by the secretary or any assistant secretary. In case the officers who shall have signed and sealed any such bonds shall cease to be officers of the company before the bonds so signed and sealed shall have been actually issued, certified, and delivered, such bonds may nevertheless be adopted and used by the company, and may be issued, certified, and delivered as though the persons who signed and sealed such bonds had not ceased to be officers of the company. There shall be attached to the coupon bonds coupons for the interest to grow due thereon, authenticated by the engraved signature of the treasurer or of any future treasurer of the company; and the company may adopt and use for that purpose the engraved signature of any person who shall have been such treasurer, notwithstanding the fact that such person may have ceased to be such treasurer when such bonds shall have been actually issued, certified, and delivered.

“Resolved further, That in order to secure the payment of said bonds issued and to be issued, with interest thereon, this company execute a mortgage or deed of trust to the Central Trust Company of New York, a corporation of the State of New York, as Trustee, covering the properties of the company described in the printed form of mortgage now submitted to this board.

“Resolved further, That the said printed form of mortgage now submitted to the board, and the forms of bonds embodied therein, be, and the same are hereby, approved, and that the president, or any vice president, and the secretary, or any assistant secretary, be, and they are hereby, authorized to execute the same on behalf of the company under its corporate seal.”

And whereas the said resolution of the board of directors of the Railway Company were thereafter submitted to a meeting of the stockholders of the Railway Company duly called and held, and such action of the said board of directors was duly ratified
291 and confirmed by resolution, a copy of which is as follows:

“Resolved, That the action of the board of directors in authorizing the issue of the first refunding mortgage gold bonds of the company and the execution of the first refunding mortgage to secure the same as set forth in the resolutions of the board of directors now submitted to this meeting be, and the same is, hereby in all respects ratified, approved, and confirmed.”

And whereas the form of the coupon bonds, and of the coupons to be attached thereto, and of the registered bonds, and of the Trustee's certificate to be signed by the Central Trust Company of New York, severally and respectively, are to be substantially as follows, to wit:

(Form of coupon first refunding mortgage bond.)

No.

\$1,000 (or \$500).

United States of America. The Central Pacific Railway Company.
First refunding mortgage gold bond.

Know all men by these presents, That the Central Pacific Railway Company, a corporation, hereinafter called the “Railway Company,” for value received, promises to pay to the bearer, or, if registered, to the registered holder of this bond, on the first day
292 of August, in the year 1949, at the office or agency of the Railway Company in the city of New York, one thousand (or five hundred) dollars gold coin of the United States, of the present standard of weight and fineness, and to pay interest thereon at the rate of not exceeding four per cent per annum from August 1, 1899, payable semiannually at the said office or agency in like gold coin, on the first day of February and the first day of August in each year, but only upon presentation and surrender, as they severally mature, of the coupons therefor annexed hereto.

Both the principal and interest of this bond are payable without deduction for any tax or taxes which the Railway Company may be required to pay or to retain therefrom, under any present or future law of the United States or of any State or county or municipality therein.

This bond is one of a series of first refunding mortgage gold bonds (coupon and registered) of the Railway Company, issued and to be issued for an aggregate principal sum not exceeding one hundred million dollars at any one time outstanding, under and in

pursuance of, and all equally secured by, a mortgage or deed of trust dated August 1st, 1899, executed by the Railway Company to the Central Trust Company of New York as Trustee of all the property and franchises of the Railway Company conveyed in trust by said mortgage or deed of trust, to which reference is hereby made for a statement of the property and franchises mortgaged, the nature and extent of the security, the rights of the holders of said bonds under the same, and the terms and conditions upon which said bonds are issued and secured.

This bond shall pass by delivery unless registered in the owner's name on the books of the Railway Company at its office or agency in the city of New York, such registry being noted on the bonds by the bond registrar of the Railway Company. After such registration no transfer shall be valid unless made on the company's books by the registered owner and similarly noted on the bond, but the same may be discharged from registry by being transferred to bearer, and thereafter transferability by delivery shall be restored, but this bond may again from time to time be registered or transferred to bearer as before. Such registration, however, shall not affect the negotiability of the coupons, which shall continue to be transferable by delivery merely.

The holder may also, at his option, surrender for cancellation this bond, with the coupons for future interest thereon in exchange for a registered bond without coupons, as provided in said mortgage or deed of trust.

This bond shall not become obligatory for any purpose until it shall have been authenticated, by the certificate, hereon endorsed, of the Trustee under said mortgage or deed of trust.

In witness whereof, The Central Pacific Railway Company has caused these presents to be signed by its president or one of its vice presidents, and its corporate seal to be hereunto affixed, and to be attested by its secretary or assistant secretary, and coupons for said interest with the engraved signature of its treasurer to be attached hereto this 1st day of August, 1899.

(The mortgage or deed of trust securing this bond has been duly stamped according to law.)

CENTRAL PACIFIC RAILWAY COMPANY,

By

Vice President.

[L. S.]

Attest:

Assistant Secretary.

295 (Form of interest coupon, of which the first is to be payable
_____, 1899.)

No. \$20.00 (or \$10.00)

On the first day of _____ the Central Pacific Railway Company will pay to bearer at its office or agency in the city of New York twenty (or ten) dollars United States gold coin of the present standard of weight and fineness without deduction for taxes, being six months' interest then due on its first refunding mortgage gold bond No.

Treasurer.

(Form of registered refunding mortgage bond.)

No. \$_____

United States of America. The Central Pacific Railway Company.
First refunding mortgage gold bond.

Know all men by these presents that the Central Pacific Railway Company, a corporation, hereinafter called the "Railway Company," for value received, promises to pay to _____ or registered assigns the sum of _____ dollars gold coin of the United States of the present standard of weight and fineness on the first day of _____ August, in the year 1949, at the office or agency of the Railway Company in the city of New York, and to pay interest thereon 296 _____ at the rate of (not exceeding four) per cent per annum from the first day of February or August next preceding the date hereof, payable semiannually at said office or agency in like gold coin on the first day of February and on the first day of August in each year until the payment of said principal sum.

Both the principal and interest of this bond are payable without deduction for any tax or taxes which the Railway Company may be required to pay or to retain therefrom under any present or future law of the United States or of any State or county or municipality therein.

This bond is one of a series of first refunding mortgage gold bonds (coupon and registered) of the Railway Company, issued and to be issued for an aggregate principal sum not exceeding one hundred million dollars at any one time outstanding under and in pursuance of and all equally secured by a mortgage or deed of trust dated August 1st, 1899, executed by the Railway Company to the Central Trust Company of New York as Trustee of all the property and franchises of the Railway Company conveyed in trust in said mortgage or deed of trust, to which reference is hereby made for a statement

of the property and franchises mortgaged, the nature and extent of the security and the rights of the holders of said bonds under the same, and the terms and conditions upon which said bonds are issued and secured.

This bond is transferrable by the registered holder thereof in person, or by attorney duly authorized, on the books of the Railway Company, at its office or agency in the city of New York upon surrender and cancellation of this bond; and thereupon a new registered bond will be issued to the transferee in exchange herefor, as provided in said mortgage or deed of trust, and on payment, if the Railway Company shall so require, of the charge therein provided for.

This bond shall not become obligatory for any purpose until it shall have been authenticated by the certificate hereon indorsed by the trustee under said mortgage or deed of trust.

In witness whereof, the Central Pacific Railway Company has caused these presents to be signed by its president or one of its vice presidents, and its corporate seal to be hereunto affixed, and to be attested by its secretary or an assistant secretary this day of

(The mortgage or deed of trust securing this bond has been duly stamped according to law.)

CENTRAL PACIFIC RAILWAY COMPANY,

By

[L. S.]

Vice President.

Attest:

Assistant Secretary.

(Form of trustee's certificate.)

This bond is one of a series of bonds described in the within-mentioned mortgage or deed of trust executed by the Central Pacific Railway Company to the undersigned.

CENTRAL TRUST COMPANY OF NEW YORK,

Trustee.

By

Vice President.

And whereas, in pursuance of such authority, and of all and every legal power and authority in it vested, the Railway Company proposes now to make and execute and from time to time hereafter to issue and to deliver bonds hereby secured; and in this indenture to declare the terms and conditions upon which every such bond is and shall be issued and secured.

Now, therefore, this indenture witnesseth:

That in order to secure the payment of the principal and interest of all such bonds at any time issued and outstanding under this indenture, according to their tenor and effect, and the performance of all the covenants and conditions herein contained, and to declare the terms and conditions upon which such bonds were issued and received, the Railway Company, party of the first part, in consideration of the premises and of the purchase and acceptance of such bonds by the holders thereof, and of the sum of one dollar to it duly paid by the trustee at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has executed and delivered these presents, and has granted, bargained, sold, released, conveyed, assigned, transferred, and set over, and by these presents does grant, bargain, sell, release, convey, assign, transfer, and set over, unto the Trustee, party of the second part, its successors and assigns, forever:

All and singular, the railroads, estates, rights, properties, privileges, and franchises described as follows, to wit:

First. The lines of railroad owned by the Railway Company extending from a point about five miles west of Ogden, in the State of Utah, through the States of Utah, Nevada, and California, to and into the city of Sacramento, in the State of California, and from said Sacramento to San Jose, in said last-mentioned State, and from Niles to Oakland and from Lathrop to Goshen, all in the State of California, and from Roseville, in said State of California, to the California and Oregon boundary.

Second. All the railways belonging to the party of the first part in San Francisco, Oakland, and Alameda, in the State of California, and the terminals belonging to the party of the first part, used in connection therewith, including wharves, piers, docks, embankments, ferries, steamers, and transfer and ferry boats.

Third. All roadbeds, superstructures, rights of way, rails, tracks, sidetracks, bridges, viaducts, terminals, buildings, depots, stations, warehouses, car houses, engine houses, freight houses, coal houses, wood houses, machine shops and other shops, turntables, water stations, fences, docks, structures, erections, and fixtures and all other things of whatever kind, now owned or hereafter acquired by the Railway Company, or its successors, which shall in anywise or at any time, belong or appertain to or be provided for use upon, or for the purposes of, any of said lines of railroad hereby mortgaged or intended to be mortgaged, and any and all other property, real or personal, of every kind and description, now or hereafter acquired by the Railway Company, or its successors, for use upon, or for the purposes of, such lines of railroad or terminals, or any of them.

Fourth. Any and all locomotives, engines, cars, and other rolling stock, equipment, machinery, instruments, tools, implements, materials, furniture, and other chattels of the railway company now owned or hereafter held, acquired, or provided by the railway company, or its successors, for use upon any of such lines of railroad or terminals or other property hereby mortgaged.

Fifth. Any and all other railroads, equipment, and terminals owned by the Central Pacific Railroad Company on the first day of February, one thousand eight hundred and ninety-nine.

Sixth. Any and all corporate or other rights, privileges, and franchises which the Railway Company now has or which the Railway Company or its successors hereafter shall acquire, possess, or become entitled to, for or appertaining to the construction, maintenance, use, or operation of such lines of railroad or terminals or other property hereby mortgaged; and

302 Seventh. Any and all the rents, issues, profits, tolls, and other income of such lines of railroad or terminals or other property now or at any time hereafter subject to the lien of this indenture:

To have and to hold the premises, railroads, properties, real or personal, rights, franchises, estates, and appurtenances hereby conveyed and assigned, or intended to be conveyed or assigned, unto the Trustee and to its successors and assigns forever.

But in trust for the equal and proportionate benefit and security of all present and future holders of the bonds and interest obligations issued and to be issued under and secured by this indenture, and for the enforcement of the payment of said bonds and interest obligations, when payable, and the performance of and compliance with the covenants and conditions of this indenture, without preference, priority, or distinction as to lien or otherwise of any one bond over any other bond issued hereunder by reason of priority in the issue or negotiation thereof, or otherwise howsoever.

And it is hereby covenanted and declared, That all such bonds, with the coupons for interest thereon, are to be issued and
303 certified and delivered, and that the mortgaged premises are to be held by the Trustee, subject to the further covenants, conditions, uses, and trusts hereinafter set forth; and it is covenanted between the parties hereto and for the benefit of the respective holders, from time to time, of bonds issued hereunder, as follows, viz:

ARTICLE ONE.

Issue and appropriation of bonds.

SECTION 1. All bonds to be secured hereby from time to time shall be executed and delivered by the Railway Company to the trustee

hereunder, for certification, and thereupon the said Trustee shall certify and deliver the same, as provided in this article, and not otherwise. Any of such bonds from time to time at the option of the Railway Company may be executed, certified and issued originally, either as coupon bonds or as registered bonds. The aggregate amount of the bonds issued and outstanding under this indenture shall never at any one time exceed the principal sum of one hundred million dollars (\$100,000,000).

Only such bonds as shall bear thereon endorsed such certificate of the said Trustee by it duly executed under the hand of its president, vice president, or second vice president, shall be secured
304 by this indenture, or shall be entitled to any lien or benefit hereunder; and every such certificate of the said Trustee upon any bond executed in behalf of the Railway Company shall be conclusive evidence that the bond so certified has been duly issued hereunder, and is entitled to the benefit of the trust hereby created.

Before certifying or delivering any coupon bond hereby secured, the said Trustee shall cut off and cancel all coupons thereof then matured; and the said Trustee shall not certify or deliver any registered bond bearing interest from any date more than six months prior to such certification or delivery.

SEC. 2. Of the bonds authorized to be issued under, and secured by, this indenture, bonds to the aggregate amount of fifty-eight million eight hundred and twenty thousand dollars (\$58,820,000) and bearing interest at the rate of four per centum per annum payable semi-annually, immediately upon the execution and delivery hereof, or as soon thereafter as from time to time may be required by the Railway Company, shall by the said Trustee be certified and delivered to the Railway Company, or upon its order in writing under its corporate seal; but the Railway Company shall use all of the bonds so certified and delivered under this section, for delivery to
the Treasurer of the United States under said settlement
305 agreement between the United States of America, the Central Pacific Railroad Company and Messrs. Speyer & Co., dated February 1st, 1899, and except as so required, may use the same for the general purposes of the Railway Company.

If and so far as any of the said bonds to the aggregate amount of fifty-eight million eight hundred and twenty thousand dollars (\$58,820,000) shall be held by the United States of America in the form of registered bonds, the same or any part or parts thereof may at any time or from time to time be exchanged by it for coupon bonds issued hereunder and secured hereby to the like amount and carrying interest from the date from which interest is then due upon such registered bonds. Upon the request of the United States, made by or

through its Secretary of the Treasury therefor, and upon the surrender by it to the Trustee of such registered bonds for cancellation, such coupon bonds shall be issued to the United States to the like amount with the amount of the registered bonds surrendered and carrying interest as above provided, and the surrendered registered bonds shall be cancelled.

When and as any of the bonds issued hereunder and so delivered to the Treasurer of the United States shall be returned to the
306 Railway Company and shall be delivered to the Trustee, either cancelled or for cancellation, the said Railway Company may execute in lieu thereof, and the Trustee shall, when such bonds shall have been cancelled, certify and deliver to the Railway Company, or upon its order in writing under its corporate seal, new coupon or registered bonds, or partly coupon and partly registered bonds, in the form above described to the amount, dollar for dollar in face value, of the bonds issued hereunder, so returned and delivered to the Trustee, bearing interest at the rate of four per centum per annum, or, if the said Railway Company shall so request, at a lower rate, and all such new bonds so executed, certified, and delivered shall be entitled to the benefit and security hereof and to share ratably therein with all other bonds from time to time issued and outstanding hereunder.

Arrangements have been made to secure the return to the Railway Company and reservation under section 3 of this article of bonds to the amount at their face value of \$10,045,500, forming part of the bonds to the amount at their face value of \$58,820,000 to be delivered to the Treasurer of the United States under the settlement agreement above referred to.

SEC. 3. The remainder of such authorized issue of bonds
307 over and above the fifty-eight million eight hundred and twenty thousand dollars (\$58,820,000) face value to be delivered to the Treasurer of the United States as above stated; that is to say, bonds to the amount of forty-one million one hundred and eighty thousand dollars (\$41,180,000), together with the bonds to the amount of ten million and forty-five thousand and five hundred dollars (\$10,045,500) to be returned to the Railway Company as hereinbefore stated shall be reserved, to be executed from time to time, and to be certified and delivered by the said Trustee when and as called for by the Railway Company against deposit with the Trustee as security for the bonds issued and to be issued hereunder of outstanding old bonds of the classes hereinafter enumerated, together with all unmatured coupons appertaining thereto respectively, such bonds to be so issued under this mortgage against such

deposit of such outstanding old bonds at the rates hereinafter mentioned; that is to say:

One thousand dollars face value of such refunding bonds against such deposit with the Trustee of each \$1,000 face value of first mortgage bonds of the Central Pacific Railroad Company of California or the Western Pacific Railroad Company mentioned
308 under subdivision (a), (b), or (c) in the foregoing enumeration of outstanding old bonds.

One thousand dollars face value of such refunding bonds against such deposit with the Trustee of each \$1,000 face value of California and Oregon Railroad Company or Central Pacific Railroad Company, successor, first-mortgage bonds mentioned under subdivision (d) in such enumeration of outstanding old bonds.

One thousand dollars face value of such refunding bonds against such deposit with the Trustee of each \$1,000 face value of Central Pacific Railroad Company first-mortgage (San Joaquin Valley division) bonds mentioned under subdivision (e) in such enumeration of outstanding old bonds.

Five hundred dollars face value of such refunding bonds against such deposit with the Trustee of each \$1,000 face value of Central Pacific Railroad Company fifty-year five per cent bonds mentioned under subdivision (f) in such enumeration of outstanding old bonds.

Five hundred dollars face value of such refunding bonds against such deposit with the Trustee of each \$1,000 face value of Central Pacific Railroad Company land bonds mentioned in subdivision (g) of such enumeration of outstanding old bonds.

309 Whenever, on or after the maturity of any of such outstanding old bonds, or on or after a date eight months prior to such maturity, the Railway Company shall tender or shall cause to be tendered to said Trustee cash sufficient to purchase or to pay the same at par (and shall also provide to the satisfaction of the said Trustee for any interest due upon such bonds, or accruing before their maturity) the said Trustee shall receive such cash, and in consideration thereof shall certify and deliver to the Railway Company or upon its order bonds hereby secured and reserved under this section at the rates above prescribed, respectively, for certification of such refunding bonds against the deposit with the Trustee of all such outstanding old bonds, for the purchase or payment of which cash shall have been so provided.

All cash received by the said Trustee under this subdivision of this section shall be by it held and applied to the purchase at not above par, or, if such purchase be impracticable, to the payment at par, of an equivalent amount of such outstanding old bonds then unpaid, for the purchase or payment of which such cash shall have been received.

Every outstanding old bond deposited with the Trustee, as above provided, shall by said Trustee be stamped with the words "Not negotiable. Held in trust for the purposes declared in the first refunding mortgage of the Central Pacific Railway Company, dated August 1, 1899", and (either with or without conversion into registered bonds, at the option of the said Trustee) shall be held by the said Trustee as purchaser, without extinguishment or impairment of lien, as additional security for the payment of the bonds hereby secured until (1) not less than ninety-five per cent of all bonds of the same issue at any time outstanding shall have been deposited, when all deposited bonds of such issue shall, upon the written request of the Railway Company, be cancelled by the Trustee and surrendered to the Railway Company, or until (2) not less than ninety-five per cent of all outstanding old bonds of all the issues above enumerated shall have been deposited hereunder with the said Trustee, whereupon, on the written request of the Railway Company, the said Trustee shall cancel and shall surrender to the Railway Company all outstanding old bonds then in its possession.

If, at the time of the maturity of any such outstanding old bonds, the holder thereof shall decline to sell and to deliver the same at par and accrued interest, but shall require the payment thereof, then, upon payment thereof, the said Trustee shall certify and shall deliver to the Railway Company, or upon its order, the same amount at par of said bonds reserved hereunder as though said matured bonds had been purchased by the Railway Company and by it deposited with the said Trustee; and by virtue of such payment of such outstanding old bonds and the issue of such new bonds hereunder the Trustee shall be forthwith subrogated to and vested with all the rights and liens of the holders of the bonds so paid.

The Railway Company shall provide and maintain books, wherein it shall register as the property of the Trustee all such outstanding old bonds received by the said Trustee; and, except as herein expressly provided, no such outstanding old bonds shall be cancelled by the Trustee.

Neither the principal nor the interest of any such outstanding old bond so held by the said Trustee shall be collected or required to be paid, unless or until proceedings shall have been instituted to enforce the mortgage securing such bond, either by entry or by sale; but when and thereupon all of the bonds of that issue then so held by the said Trustee, and all interest thereon maturing on or subsequent to the date upon which the default was made, for which such proceedings shall have been instituted, shall be entitled to payment; and payment thereof shall be enforced ratably and equally with all other bonds of such issue not deposited with the said

Trustee; but all interest maturing upon any deposited outstanding old bond prior to any default under this mortgage or under the mortgage securing such deposited bond shall be deemed to have been paid and satisfied, and, upon request of the Railway Company therefor, the coupons or interest warrants representing such interest shall be cancelled by the Trustee and returned to the Railway Company.

Upon the satisfaction and discharge of the mortgage or mortgages securing any issue of such outstanding old bonds, the Trustee shall, when and as called for by the Railway Company, certify and deliver to it the aggregate amount of refunding bonds issuable under this mortgage against deposit of all the now outstanding bonds secured by the mortgage or mortgages so satisfied and discharged, except so far as such refunding bonds shall have been theretofore issued against deposit of such outstanding old bonds with the Trustee as hereinbefore provided.

Notwithstanding anything to the contrary hereinbefore contained, upon being satisfied that all bonds deliverable to the Treasurer of the United States under the settlement agreement above referred to have been delivered and that sufficient provision has been made for the purchase or payment of each and every outstanding old bond, the said Trustee, without any other or further condition precedent, shall certify and shall deliver upon the order of the Railway Company the whole amount of the bonds by this indenture authorized and secured, and then remaining unissued; and from time to time the Railway Company shall take all practicable measures to procure, upon terms which the Railway Company shall deem reasonable, the satisfaction and discharge of all the mortgages securing such outstanding old bonds.

SEC. 4. Whenever any coupon bond or bonds issued under and secured by this indenture, together with all unmaturing coupons thereto belonging, shall be surrendered for exchange for registered bonds, the Railway Company shall issue and the said Trustee shall certify and deliver, in exchange for such coupon bond or bonds, like amount of registered bonds without coupons. Such registered bonds shall be for \$1,000, or for such multiples thereof as from time to time the Railway Company may prescribe, and shall bear interest at the same rate as the surrendered coupon bonds, and from

the date of maturity of the last matured coupons thereof. In every case of such exchange the said Trustee forthwith shall cancel the surrendered bond or bonds and coupons and shall deliver the same to the Railway Company.

Whenever any such registered bond shall be surrendered for transfer to the Railway Company shall issue, and the said Trustee shall certify and deliver to the transferee, upon surrender and cancellation

of the bond or bonds transferred, a like amount of new registered bonds for \$1,000, or for such multiples of \$1,000 as the Railway Company from time to time may authorize, and bearing interest at the same rate as the surrendered registered bond, but no registered bond may be converted into a coupon bond.

For any exchange of coupon bonds for registered bonds, and for any transfer of registered bonds without coupons, the Railway Company, at its option, may make a charge not exceeding one dollar for each new registered bond issued upon such exchange or transfer.

15 SEC. 5. Upon surrender by the Railway Company to the Trustee or cancellation of any coupon or registered bonds issued hereunder and secured hereby, with a request that bonds be issued hereunder for the like amount at a reduced rate of interest, the Trustee shall certify and deliver to the Railway Company bonds issued hereunder and secured hereby to the amount at their face value of the bonds so surrendered, and carrying interest at such lower rate of interest than four per cent per annum, payable semi-annually, as the Railway Company may prescribe in that behalf, and the new bonds so certified and delivered shall be entitled to share in the security of these presents with the like effect as if they had been bonds originally issued under this mortgage.

SEC. 6. In case any coupon bond issued hereunder, with the coupons hereto appertaining, or any registered bond without coupons, shall become mutilated or be destroyed, the Railway Company, in its discretion, may issue, and thereupon the said trustee shall certify and deliver, a new bond of like tenor and date, bearing the same distinguishing number, in exchange and substitution for, and upon cancellation of, the mutilated coupon bond and its coupons, or the mutilated registered bond, or in lieu of, and substitution for, the coupon bond and its coupons, or the registered bond so destroyed, upon receipt of satisfactory evidence of the destruction of such coupon bond and its coupons or of such registered bond, and upon receipt also of satisfactory indemnity.

16 SEC. 7. Nothing in this article or in any other article of this indenture, expressed or implied, is intended or shall be construed to enlarge the security of the holders of any of said outstanding old bonds, or to create any trust in their favor, or to give to any person or corporation other than the parties hereto and the holders of bonds issued under and secured by this indenture any legal or equitable right, remedy, or claim, under or in respect to this indenture, or any covenant, condition, or provision herein contained; all its covenants, conditions, and provisions being intended to be, and being, for the sole and exclusive benefit of the parties hereto and of the holders of the bonds hereby secured.

ARTICLE TWO.

Particular covenants of the Railway Company.

The Railway Company covenants as follows:

SEC. 1. It will duly and punctually pay, or cause to be paid, to every holder of any bond issued and secured hereunder the principal and interest accruing thereon, at the dates and place and in the manner mentioned in such bonds or in the coupons thereto belonging, according to the true intent and meaning thereof, without deduction from either principal or interest for any tax or taxes imposed by the

United States or any State or county or municipality thereof
317 which the Railway Company may be required to pay or to retain therefrom under or by reason of any present or future law. When and as paid all such coupons forthwith shall be cancelled.

SEC. 2. Whenever required by the Trustee, the Railway Company will grant, convey, confirm, assign, transfer, and set over unto the Trustee the estate, right, title, and interest of the Railway Company, in or to, all real and personal estate, corporate rights, and franchises which, in any way or manner, it shall acquire as appurtenant to, or for the use of the railroads hereby mortgaged; and also it will do, execute, acknowledge, and deliver, or it will cause to be done, executed, acknowledged and delivered, all and every such further acts, deeds, transfers, and assurances for the better assuring, conveying, and confirming unto the Trustee all and singular the premises, estates, and property hereby conveyed, or intended so to be, as they or either of them shall reasonably require for better accomplishing the provisions and purposes of this indenture, and for securing payment of the principal and interest of the bonds intended to be hereby secured.

But nothing in this indenture expressed or implied is intended or shall be construed, to limit the right or power of the Rail-
318 way Company, hereby expressly reserved, to own, and hold or to construct, or to acquire, other lines of railroad, or branches or extensions, or interests therein, or other property free from the lien hereof.

SEC. 3. The Railway Company at an office or agency to be maintained by it in the city of New York will keep a sufficient register or registers of bonds issued hereunder, which registers at all reasonable times shall be open to the inspection of the Trustee; and, upon presentation for such purpose, it will, under such reasonable regulations as it may prescribe, register therein any coupon bonds and any bonds without coupons issued under the provisions hereof.

Upon presentation of any such registered coupon bond bearing written power to transfer the same executed by the registered holder

for the time being, in a form approved by the Railway Company, such bond shall be transferred upon such register. The registered holder of any such registered coupon bond also shall have the right to cause the same to be registered as payable to bearer, in which case transferability by delivery shall be restored, and thereafter the principal of such bond shall be payable to any person presenting the same; but any such coupon bond registered as payable to bearer may be registered again in the name of the holder with
319 the same effect as a first registration thereof. Successive registrations and transfers as aforesaid may be made from time to time as desired; and each registration shall be noted by the bond registrar on the bond.

Any registered bond without coupons may be transferred by instrument in writing executed by the registered holder, upon the surrender of such bond, and the payment of the charge for such transfer, in which case new registered bonds for an equivalent amount will be issued to the transferee or transferees, as provided in section 4 of article one hereof.

As to all bonds so registered, the person in whose name the same shall be registered shall, for all purposes of this indenture, be deemed and be regarded as the owner thereof, and thereafter, payment of, or on account of the principal of such bond, if it be a registered coupon bond, and of the principal and interest, if it be a registered bond without coupons, shall be made only to or upon the order of such registered holder thereof, but such registration may be changed as above provided. All such payments so made shall be valid and effectual to satisfy and to discharge the liability upon such bonds to
the extent of the sum or sums so paid.

320 Registration of any coupon bond shall, however, not restrain the negotiability of any coupon thereto belonging, but every such coupon shall continue to pass by delivery and shall remain payable to bearer.

Sec. 4. The Railway Company will well and truly pay and discharge upon presentation thereof for payment at or after maturity, or will acquire and will deposit with the trustee hereunder all of the outstanding old bonds of the issues above mentioned; and it will punctually pay or cause to be paid, or, upon demand of the said Trustee, will provide to its satisfaction for the payment of, the interest on all such outstanding old bonds of said issues, not acquired and deposited hereunder, as and when such interest shall become due and payable, until all bonds of said issues shall have been finally paid and discharged, or shall have been acquired and deposited hereunder, and it will not extend any of such outstanding old bonds and will not cause or suffer the same to be extended.

SEC. 5. The Railway Company will not voluntarily create or suffer to be created any lien or charge having priority to or preference over the lien of these presents upon the mortgaged premises, or any
321 part thereof, or upon the income thereof; and, within three months after the same shall accrue, it will pay, or cause to be discharged, or will make adequate provision for the satisfaction or discharge of, all lawful claims and demands of mechanics, laborers, and others, which, if unpaid, might by law be given precedence to this indenture as a lien or charge upon the mortgaged premises or any part thereof, or the income thereof.

SEC. 6. The Railway Company from time to time will pay and discharge all taxes, assessments, and Governmental charges lawfully imposed upon the lines of railroad and other premises hereby mortgaged, or upon any part thereof, or upon the income and profits thereof, the lien of which would be prior to the lien hereof, so that the priority of this indenture shall be fully preserved in respect of such properties; provided, however, that nothing contained in this section shall require the Railway Company to pay any such tax, assessment, or charge, so long as the Railway Company in good faith shall contest the validity thereof.

SEC. 7. The Railway Company will not issue, negotiate, sell, or dispose of any bonds hereby secured in any manner other than in accordance with the provisions of this indenture, and the
322 agreements in that behalf herein contained; and in issuing, selling, negotiating, or otherwise disposing of such bonds from time to time it will well and truly apply or cause to be applied the same, or the proceeds thereof, to and for the purposes herein prescribed, and to and for no other or different purpose.

ARTICLE THREE.

Remedies of trustee and bondholders.

SECTION 1. The Railway Company covenants and agrees that it will not directly or indirectly extend or assent to the extension of the time for payment of any coupon or claim for interest upon any bonds secured hereby, and that it will not directly or indirectly be a party to any arrangement therefore by purchasing or funding said coupons or claims for interest on registered bonds or in any other manner. In case the payment of any such coupon or claim for interest should be so extended by or with the consent of the Railway Company, such coupon or claim for interest so extended shall not be entitled in case of default hereunder to the benefit or security of this indenture, except subject to the prior payment in full of the principal of all bonds issued hereunder and outstanding, and of all

coupons and claims for interest on such bonds, the payment of
323 which has not been so extended, the intention of this agree-
ment being to prevent any accumulation after maturity of
coupons or claims for interest upon registered bonds.

Sec. 2. In case (1) default shall be made in the payment of any
interest on any bond or bonds secured by this indenture, or in the
performance of any of the covenants of the Railway Company con-
tained in section 5 of article two hereof, and any such default shall
have continued for a period of six months; or in case (2) default
shall be made in the due and punctual payment of the principal of
any bond hereby secured; or in case (3) default shall be made in the
due observance or performance of any other covenant or condition
herein required to be kept or performed by the Railway Company,
and any such default under clause (3) hereof shall have continued
for a period of six months after written notice thereof from the
Trustee or from the holders of five per cent in amount of the bonds
hereby secured; then, and in each and every such case, the Trustee
personally, or by its agents or attorneys, may enter into and upon all
or any part of the railways, rolling stock, property and premises,
lands, rights, interest, and franchises hereby conveyed, and each
and every part thereof, and may exclude the Railway Com-
324 pany, its agents and servants, wholly therefrom, and having
and holding the same may use, operate, manage, and control
said railways and other premises, regulate the tolls for the trans-
portation of passengers and freight thereon, and conduct the busi-
ness thereof, either personally or by their superintendents, managers,
receivers, agents, and servants or attorneys, to the best advantage of
the holders of the bonds hereby secured; and upon every such entry
the Trustee, at the expense of the trust estate, from time to time,
either by purchase, repairs, or construction, may maintain and re-
store, and insure or keep insured, the rolling stock, tools, and ma-
chinery, and other property, buildings, bridges, and structures
erected, or provided for use, in connection with said railways and
other premises, and whereof they shall become possessed, as afore-
said, in the same manner and to the same extent as is usual with
railway companies, and likewise from time to time, at the expense of
the trust estate, may make all necessary or proper repairs, renewals,
and replacements, and useful alterations, additions, betterments, and
improvements thereto and thereon, as to them may seem judicious;
and in such case the Trustee shall have the right to manage the
mortgaged premises, and to carry on the business and exercise
325 all rights and powers of the Railway Company, either in the
name of the Railway Company or otherwise, as the Trustee
shall deem best; and it shall be entitled to collect and to receive all

tolls, earnings, incomes, rents, issues, and profits of the same and every part thereof; and after deducting the expenses of operating said railways and other premises, and of conducting the business thereof, and of all repairs, maintenance, renewals, replacements, alterations, additions, betterments, and improvements, and all payments which may be made for taxes, assessments, insurance, and prior or other proper charges, upon the said premises and property or any part thereof, as well as just and reasonable compensation for its own services, and for all agents, clerks, servants, and other employees by it properly engaged and employed, it shall apply the moneys arising as aforesaid as follows:

In case the principal of the bonds hereby secured shall not have become due, to the payment of the interest in default, in the order of the maturity of the installments of such interest, with interest thereon at the rate of four per cent per annum; such payments to be made ratably to the persons entitled thereto without discrimination or preference.

326 In case the principal of the bonds hereby secured, shall have become due, by declaration or otherwise, first, to the payment of the accrued interest (with interest on the overdue installment thereof at the rate of four per cent per annum) in the order of the maturity of the installments, and then to the payment of the principal of all bonds hereby secured; in every instance such payment to be made ratably to the persons entitled to such payment, without any discrimination or preference.

These provisions, however, not being intended in anywise to modify the provisions of section 1 of this article.

SEC. 3. In case default shall be made in the payment of any interest on any bond or bonds hereby secured, or in the performance of any of the covenants of the Railway Company contained in section 5 of article two hereof, and any such default shall have continued for a period of six months, then and in every case of such continuing default, upon the written request of the holders of a majority in amount of the bonds hereby secured then outstanding, the Trustee, by

notice in writing delivered to the Railway Company, shall declare the principal of all bonds hereby secured then outstanding to be due and payable immediately, and upon any such declaration the same shall become and be immediately due and payable, anything in this indenture or in said bonds contained to the contrary notwithstanding. This provision, however, is subject to the condition, that if at any time after the principal of said bonds shall have been so declared due and payable, all arrears of interest upon all such bonds, with interest at the rate of four per cent per annum on overdue installments of interest, and the expenses of the Trustee, shall

either be paid by the Railway Company or be collected out of the mortgaged premises before any sale of the mortgaged premises shall have been made, then and in every such case the holders of a majority in amount of the bonds hereby secured then outstanding, by written notice to the Railway Company and to the Trustee may waive such default and its consequences; but no such waiver shall extend to or affect any subsequent default, or impair any right consequent thereon.

In case the Trustee shall have proceeded to enforce any right under this indenture by foreclosure, entry, or otherwise, and such proceedings shall have been discontinued or abandoned because of such
328 waiver or for any other reason, or shall have been determined adversely to the Trustee, then and in every such case the Railway Company and the Trustee shall be restored to their former position and rights hereunder in respect of the mortgaged premises, and all rights, remedies, and powers of the Trustee shall continue as though no such proceedings had been taken.

Sec. 4. In case (1) default shall be made in the payment of any interest on any bond at any time issued under and secured by this indenture or in the performance of any of the covenants of the Railway Company contained in section 5 of article two hereof, and any such default shall have continued for a period of six months; or in case (2) default shall be made in the due and punctual payment of the principal of any bond hereby secured; or in case (3) default shall be made in the due observance or performance of any other covenant or condition herein required to be kept or performed by the Railway Company, and any such default under clause (3) hereof shall have continued for a period of six months after written notice thereof from the Trustee or from the holders of five per cent in amount of the bonds hereby secured; then, and in each and every such case of
329 default, provided, however, in respect of each of the two cases so indicated, that such default shall have continued for six months, as above provided, the Trustee, with or without entry, personally or by attorney, in its discretion (a) may sell to the highest and best bidder all and singular the mortgaged property and premises, rights, franchises and interests, and appurtenances, and other real and personal property of every kind, and all right, title and interest, claim and demand therein, and right of redemption thereof, in one lot and as an entirety, unless a sale in parcels shall be required under the provisions of section 6 of this article, in which case such sale may be made in parcels as in said section provided: which sale or sales shall be made at public auction at such place in the city of Ogden, in the State of Utah, or at such other place and at such time and upon such terms as the Trustee may fix and briefly specify in the notice of sale to be given as herein provided; or (b) immediately upon the expiration of the six months in the two cases so

indicated, and immediately upon default in payment of principal in the other case, may proceed to protect and enforce their rights and the rights of bondholders under this indenture by a suit or suit in equity or at law, whether for the specific performance of any covenant or agreement contained herein, or in aid of the execution of any power herein granted, or for the foreclosure of this indenture, or for the enforcement of any other appropriate legal or equitable remedy as the Trustee, being advised by counsel learned in the law, shall deem most effectual to protect and enforce any of their rights or duties hereunder.

Upon the written request of the holders of twenty-five per cent in amount of the bonds hereby secured, in case of any such continuing default, it shall be the duty of the Trustee, upon being indemnified as hereinafter provided, to take all needful steps for the protection and enforcement of their rights and the rights of the holders of the bonds hereby secured, and to exercise the powers of entry or sale herein conferred, or both, or to take appropriate judicial proceedings by action, suit, or otherwise, as the Trustee, being advised by counsel learned in the law, shall deem most expedient in the interest of the holders of the bonds hereby secured.

SEC. 5. Anything in this indenture contained to the contrary notwithstanding, the holders of seventy-five per cent in amount of the bonds hereby secured and then outstanding, from time to time, shall have the right to direct and to control the method and place of conducting any and all proceedings for any sale of the premises hereby conveyed, mortgaged, or pledged, or for the foreclosure of this indenture, or for the appointment of a receiver or of any other proceedings hereunder.

SEC. 6. In the event of any sale, whether made under the powers of sale hereby granted and conferred, or under or by virtue of judicial proceedings, or of some judgment or decree of foreclosure and sale, the whole of the property hereby mortgaged shall be sold in one parcel and as an entirety, including all the rights, titles, estates, railroads, equipment, franchises, contracts, and other real and personal property of every name and nature, unless the holders of a majority in amount of the bonds hereby secured then outstanding shall in writing request the Trustee to cause said premises to be sold in parcels, in which case the sale shall be made in such parcels as may be specified in such request or petition, or unless such sale as an entirety is impracticable by reason of some statute or other cause, and this provision shall bind the parties hereto and each and every of the holders of the bonds and coupons hereby secured or intended so to be.

SEC. 7. Notice of any such sale pursuant to any provision of this indenture shall state the time and place when and where the same is to be made, and shall contain a brief general de

ription of the property to be sold, and shall be sufficiently given if published once in each week for four successive weeks prior to such sale in a newspaper published in the city of New York, in the State of New York, and a newspaper published in the city of Ogden, in the State of Utah, and otherwise as may be required by law.

SEC. 8. The Trustee from time to time may adjourn any sale to be made by it under the provisions of this indenture by announcement at the time and place appointed for such sale or for such adjourned sale or sales, and without further notice or publication it may make such sale at the time and place to which the same shall be so adjourned.

SEC. 9. Upon the completion of any sale or sales under this indenture, the Trustee shall execute and deliver to the accepted purchaser or purchasers a good and sufficient deed, or good and sufficient deeds, of conveyance of the property and franchises sold. And the Trustee and its successors are hereby appointed the true and lawful attorneys or attorney, irrevocable, of the Railway Company, in its name and to make all necessary deeds and conveyances of property thus sold; and for that purpose they may execute all necessary acts of assignment and transfer, the Railway Company hereby ratifying and confirming all that its said attorney or attorneys shall lawfully do by virtue thereof.

Any such sale or sales made under or by virtue of this indenture, whether under the power of sale hereby granted or conferred or under or by virtue of judicial proceedings shall operate to divest all right, title, interest, claim, and demand whatsoever either in law or in equity of the Railway Company of, in, and to the premises sold, and shall be a perpetual bar both at law and in equity against the Railway Company, its successors, and assigns, and against any and all persons claiming or to claim the premises sold, or any part thereof, from, through, or under the Railway Company, its successors, or assigns.

The personal property and chattels conveyed, or intended to be conveyed, by or pursuant to this indenture, shall be real estate for all the purposes of this indenture, and shall be held and taken to be fixtures and appurtenances of the said railroads and part thereof, and are to be used and sold therewith and not separate therefrom, except as herein otherwise provided.

SEC. 10. The receipt of the Trustee shall be a sufficient discharge to any purchaser of the property, or any part thereof sold as aforesaid, for the purchase money, and no such purchaser, his representatives, grantees, or assigns, after paying such purchase money and receiving such receipt, shall be bound to see to the application of such purchase money upon or for any trust or purpose of

this indenture, or in any manner whatsoever be answerable for loss, misapplication, or nonapplication of any such purchase money or any part thereof, or be bound to inquire as to the authorization, necessity, expediency, or regularity of any such sale.

SEC. 11. In case of such sale, whether under the power of sale hereby granted or pursuant to judicial proceedings, the principal of all the bonds hereby secured, if not previously due, immediately thereupon shall become and be due and payable, anything in the bonds or in this indenture contained to the contrary notwithstanding.

SEC. 12. The purchase money, proceeds, and avails of any sale hereunder, whether under the power of sale hereby granted or pursuant to judicial proceedings, together with any other sums which may then may be held by the Trustee under any of the provisions of this indenture as part of the trust estate or of the proceeds thereof, shall be applied as follows:

335 First. To the payment of the costs and expenses of such sale, including a reasonable compensation to the Trustee, his agents, attorneys, and counsel, and of all expenses, liabilities, and advances made or incurred by the Trustee in managing and maintaining the property hereby conveyed and to the payment of all taxes, assessments, or liens prior to the lien of these presents, except taxes, assessments, or other superior liens to which such sale shall have been made subject.

Second. To the payment of the whole amount then owing or unpaid upon the bonds hereby secured for principal and interest, with interest at the rate of four per cent per annum on the overdue installments of interest, and in case such proceeds shall be insufficient to pay in full the whole amount so due and unpaid upon the bonds, then to the payment of such principal and interest with preference or priority of principal over interest or of interest over principal or of any installment of interest over any other installment of interest ratably to the aggregate of such principal and accrued and unpaid interest, subject, however, to the provisions of section 1 of this article.

336 Third. To the payment of the surplus, if any, to the Railway Company, its successors or assigns, or to whomsoever may be lawfully entitled to receive the same.

SEC. 13. In case of any sale hereunder, any purchaser, for the purpose of making settlement or payment for the property purchased shall be entitled to turn in any bonds and any matured and unpaid coupons hereby secured, in order that there may be credited as against thereon the sums payable out of the net proceeds of such sale to the holder of such bonds and coupons as his ratable share of the net proceeds after allowing for the proportion of the total purchase price required to pay the costs and expenses of the sale, or of

ise; and such purchaser shall be credited, on account of the purchase price of the property purchased, with the sums payable out of such net proceeds on the bonds and coupons so turned in; and, at any such sale any bondholders may bid for and purchase such property, and may make payment on account thereof as aforesaid, and, upon compliance with the terms of sale, may hold, retain, and dispose of such property without further accountability therefor.

SEC. 14. The Railway Company will not at any time insist upon or plead, or in any manner whatever claim or take the benefit or advantage of, any stay or extension law now or at any time hereafter in force in any locality where the mortgaged premises, or any part thereof, may or shall be situate, nor will it claim, take or insist on any benefit or advantage from any law now or hereafter in force providing for the valuation or appraisal of the mortgaged premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to the decree of any court of competent jurisdiction; nor after any such sale or sales will it claim or exercise any right under any statute enacted by any State to redeem the property so sold, or any part thereof; and it hereby expressly waives all benefit and advantage of any such law or laws; and it covenants that it will not hinder, delay, or impede the execution of any power herein granted and delegated to the Trustee, but that it will suffer and permit the execution of every such power as though no such law or laws had been made or enacted.

SEC. 15. In case the Railway Company shall make default in any of the respects mentioned in section 3 of article three hereof, and there shall be any judgment outstanding against the Railway Company unsecured by bond on appeal; or in case any judicial proceeding by any party other than the Trustee, a receiver shall be appointed of the Railway Company, or a judgment or order be entered for the sequestration of its property, the Trustee shall thereupon be entitled forthwith to exercise the right of entry herein conferred, and also any and all other rights and powers herein conferred, and provided to be exercised by the Trustee upon the occurrence and continuance of default as hereinbefore provided, and as matter of right the Trustee shall thereupon be entitled to the appointment of a receiver of the premises hereby mortgaged, and of the earnings, income, revenue, rents, issues, or profits thereof, with such powers as the court making such appointment shall confer.

SEC. 16. The Railway Company, at any time before full payment of the bonds hereby secured, and whenever it shall deem it expedient for the better protection and security of such bonds, although there be then no default entitling the Trustee to enter into possession, with the consent of the Trustee, may surrender and deliver to the Trustee

full possession of the whole or any part of the property, premises and interests hereby conveyed or intended so to be, for any period fixed or indefinite. Upon such surrender and delivery to the Trustee, with its consent, the Trustee shall enter into and take possession of the premises so surrendered and delivered and shall take and receive possession thereof for such period, fixed or indefinite, as aforesaid, without prejudice, however, to their right at any time subsequently, when entitled thereto by any provision hereof, to intervene upon and to maintain such possession, though beyond the expiration of any prescribed period. Upon any such voluntary surrender and delivery of said property and premises, or of any part thereof, to the Trustee, from the time of its entry, shall work, maintain, use, manage, control, and employ the same in accordance with the provisions of this indenture, and shall receive and apply the income and revenues thereof as provided in section 2 of this article.

SEC. 17. No holder of any bond or coupon hereby secured shall have any right to institute any suit, action, or proceeding in equity or at law for the foreclosure of this indenture, or for the execution of any trust thereof, or for the appointment of a receiver, or for any other remedy hereunder, unless such holder previously shall have given to the Trustee written notice of such default and of the continuance thereof, as hereinbefore provided; nor unless, also, the holders of twenty-five per cent in amount of the bonds hereby secured then outstanding shall have made written request upon the Trustee, and shall have afforded to it reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit, or proceeding in its own name; nor unless, also, they shall have offered to the Trustee adequate security and indemnity against the costs, expenses, and liabilities to be incurred therein or thereby; and such notification, request, and offer of indemnity are hereby declared, in every such case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of this indenture and to any action or cause of action for foreclosure or for the appointment of a receiver, or for any other remedy hereunder; it being understood and intended that no one or more holders of bonds and coupons shall have any right in any manner whatever to affect, disturb, or prejudice the lien of this indenture by his or their action, or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had, and maintained in the manner herein provided, and for the equal benefit of all holders of such outstanding bonds and coupons.

341 SEC. 18. Except as herein expressly provided to the contrary, no remedy herein conferred upon, or reserved to, the Trustee, or to the holders of bonds hereby secured, is intended to be

clusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

SEC. 19. No delay or omission of the Trustee, or of any holder of bonds hereby secured, to exercise any right or power accruing upon any default continuing as aforesaid shall impair any such right or power or shall be construed to be a waiver of any such default, or an acquiescence therein; and every power and remedy given by this article to the Trustee or to the bondholders may be exercised from time to time and as often as may be deemed expedient by the Trustee or by the bondholders severally and respectively.

SEC. 20. Notwithstanding any entry of any trustee or trustees, or receiver or receivers, into possession of the properties, rights, franchises, and premises hereby mortgaged, or any of them, the United States shall be entitled to have and enjoy the provisions embodied in article sixth of the settlement agreement between the United States of America, the Central Pacific Railroad Company, and Messrs. Speyer & Company, dated February 1, 1899, hereinbefore referred to, whereby it is provided as follows:

"Until the notes to be given by the Central Pacific Railroad Company under article second of this agreement shall have been paid in full, principal and interest, all amounts due to the Central Pacific Railroad Company, or its successor company, from the United States subsequent to the date of this agreement in respect of services to the United States, upon the bond-aided lines from a point about five miles west of Ogden to Sacramento and from Sacramento to San Jose, above referred to, shall, as audited and allowed, be applied by the United States pro rata on account of the amounts remaining unpaid on such of said notes as shall not have been purchased by Messrs. Speyer & Co. hereunder, such application being first made to the payment of accrued interest thereon and thereafter on account of the principal thereof."

SEC. 21. The Trustee under this mortgage shall, in case of default, which, under the provisions hereof, shall authorize its entry into possession or sale of the properties hereby mortgaged, be entitled, for the benefit of the holders of bonds issued hereunder and secured hereby, to enforce the lien in favor of the United States reserved in the acts of Congress mentioned on that behalf in the said settlement agreement to secure the repayment to the United States of the indebtedness to it of the Central Pacific Railroad Company referred to in said settlement agreement when such lien shall have vested in and become transferred to the said Trustee as provided in article fifth of said settlement agreement, as follows:

"When the Central Pacific Railroad Company or its successor company shall have delivered to the Treasurer of the United States said refunding bonds secured as aforesaid, then the lien in favor of the United States, above referred to as then existing, shall immediately vest in, and it is hereby, upon the happening of that event, transferred to the Trustee of the mortgage securing such refunding bonds as security for the entire issue of such bonds."

ARTICLE FOUR.

Immunity of officers, directors, and stockholders.

No recourse under or upon any obligation, covenant, or agreement of this indenture, or of any bond or coupon hereby secured, shall be had against any incorporator, stockholder, officer, or director of the

Railway Company, or of any successor corporation, either directly or through the Railway Company, by the enforcement of any assessment or by any legal or equitable proceeding in the virtue of any statute or otherwise; it being expressly agreed and understood that this mortgage and the obligations hereby secured are solely corporate obligations, and that no personal liability will ever shall attach to or be incurred by the incorporators, stockholders, officers, or directors of the Railway Company, or of any successor corporation, or any of them, under or by reason of any of the obligations, covenants, or agreements contained in this indenture, or of any of the bonds or coupons hereby secured or implied therefrom, and that any and all personal liability of every name and nature, either in common law or in equity, or by statute or constitution, of every such incorporator, stockholder, officer, or director is hereby expressly waived as a condition of and consideration for the execution and issue of this mortgage and such bonds and coupons.

ARTICLE FIVE.

Bondholders' acts, holdings, and apparent authority.

SECTION 1. Any request or other instrument required by this indenture to be signed and executed by bondholders may be in any number of concurrent instruments of similar tenor and may be signed or executed by such bondholders in person or by an agent appointed in writing. Proof of the execution of such request or other instrument, or of a writing appointing any such agent, and of the holding by any person of coupon bonds transferable by delivery, shall be sufficient for any purpose of this indenture if made in the following manner:

SEC. 2. The fact and date of the execution by any person of any such request or other instrument or writing may be proved by the certificate of any notary public or other officer authorized to take acknowledgments of deed to be recorded in New York that the person signing such request or other instrument acknowledged to him the execution thereof or by an affidavit of a witness of such execution.

SEC. 3. The amount of coupon bonds transferable by delivery held by any person executing any such request or other instrument as a bondholder, and the amounts and issue numbers of the bonds held by such persons, and the date of his holding the same, may be proved by a certificate executed by any trust company, bank, bankers, or other depository (wherever situated), if such certificate shall be deemed by the Trustee to be satisfactory, showing that at the date therein mentioned such person had on deposit with such depository the bonds therein described. The ownership of registered coupon bonds, or of registered bonds without coupons, shall be proved by the registers of such bonds as provided in section 3 of article two hereof. Such proof shall be conclusive in favor of the Trustee with regard to any action by them taken under such request or other instrument.

SEC. 4. The bearer of any coupon bond hereby secured, which at the time shall not be registered as hereinbefore authorized, and the bearer of any coupon for interest on any such bond, whether the same shall be registered or not, may be deemed and treated by the Railway Company, and the Trustee, as the absolute owner of such bond or coupon, as the case may be, for the purpose of receiving payment thereof, and for all other purposes, and no notice to the contrary shall affect the Railway Company or the Trustee.

ARTICLE SIX

Releases of mortgaged property.

SEC. 1. Upon the written request of the Railway Company, approved by resolution of its board of directors or executive committee, the Trustee, from time to time, while the Railway Company is in possession of the mortgaged premises, but subject to the conditions and limitations in this section prescribed, and not otherwise, shall release from the lien and operation of this indenture any part of the mortgaged premises then subject thereto; provided (1) that no part of the lines of track or of the rights of way shall be released, unless the same shall no longer be of use in the operation of any of the mortgaged lines of railway, and no part of such lines of track or rights of way shall be so released if thereby the continuity of the lines of railway of the Railway Company be

tween the several termini above mentioned shall be broken; and that no part of the mortgaged railways or other property shall be released hereunder, unless at the time of such release it shall no longer be necessary or expedient to retain the same for the operation, maintenance, or use of such lines of railway or for use in the business of the Railway Company.

No such release shall be made unless the Railway Company shall have sold, or shall have contracted to exchange for other property or to sell, the property so to be released; and, unless some other disposition thereof be required by some prior mortgage, the proceeds of any and all such sales, and all moneys received as compensation

for any property subject to this indenture taken by exercise of the power of eminent domain, shall be set apart and be held in trust and applied, with the approval of the said Trustee, to the purchase of other property, real or personal, or in betterment of, or additions to, or rolling stock for any part of the mortgaged premises. Any new property acquired by the Railway Company shall take the place of any property released hereunder, ipso facto, shall become and be subject to the lien of this indenture as fully as if specifically mortgaged hereby; but, if requested by the said Trustee, the Railway Company will convey the same to the Trustee, by appropriate deeds, upon the trusts and for the purposes of this indenture.

SEC. 2. The Railway Company, while in possession of the mortgaged premises, shall also have full power, in its discretion, from time to time to dispose of any portion of the machinery, equipment and implements at any time held, subject to the lien hereof, which may have become unfit for such use, replacing the same by new machinery, equipment, or implements, which shall become subject to this indenture.

SEC. 3. In no event shall any purchaser or purchasers of any property sold or disposed of under any provision of this article be required to see to the application of the purchase money.

349 SEC. 4. In case the mortgaged premises shall be in the possession of a receiver lawfully appointed, the powers in and by this article conferred upon the Railway Company may be exercised by such receiver, with the approval of the Trustee; and if the Trustee shall be in possession of the mortgaged premises under any provision of this indenture, then all the powers by this article conferred upon the Railway Company may be exercised by the Trustee in its discretion.

SEC. 5. The Railway Company from time to time may make changes or alterations in, or substitutions of, any leases, or trackage rights subject to this indenture; but in any such event any modified, altered, or substituted leases or trackage rights forthwith shall

come bound by, and be subject to, the terms of this indenture in the same manner as those previously existing.

SEC. 6. A certificate signed by the president, a vice president, or the chief engineer of the Railway Company may be received by the said trustee as conclusive evidence of any of the facts mentioned in this article, and shall be full warrant to the said Trustee for any action on the faith thereof; but the said Trustee, in its discretion, may require such further and additional evidence as to it may seem reasonable.

ARTICLE SEVEN.

Concerning the trustee.

SECTION 1. The Trustee shall not be answerable for the default or misconduct of any agent or attorney appointed by it in pursuance thereof if such agent or attorney shall have been selected with reasonable care; or for anything whatever, in connection with this trust, except willful misconduct or gross negligence. The Trustee shall not be personally liable for any debts contracted by it, or for damages to persons or property carried or injured, or for salaries or non-fulfillment of contracts, during any period wherein the Trustee shall manage the trust property or premises upon entry or voluntary surrender as aforesaid. The Trustee shall not be under any obligation to take any action towards the execution or enforcement of the trusts hereby created which, in its opinion, shall be likely to involve it expense or liability, unless one or more of the holders of the bonds hereby secured shall, as often as required by the Trustee, furnish it reasonable indemnity against such expense or liability, nor shall the Trustee be required to take notice of any default hereunder, unless notified in writing of such default by the holders of at least five per cent in amount of the bonds hereby secured then outstanding, or to take any action in respect of any default unless requested to take action in respect thereof by a writing signed by the holders of not less than twenty-five per cent in amount of the bonds hereby secured then outstanding, and tendered reasonable indemnity as aforesaid, anything herein contained to the contrary notwithstanding; but neither any such notice or request, nor this provision therefor, shall effect any discretion herein given to the Trustee to determine whether or not it shall take action in respect of such default, or to take action without such request. The Trustee shall not be responsible for the recording of this indenture and shall not be required to file the same as a chattel mortgage.

The Railway Company covenants that it will cause record of this instrument as a mortgage of real estate to be made with all con-

venient speed; on request of the Railway Company the Trustee hereunder may certify and deliver bonds hereunder to the amounts within the limits hereinbefore prescribed in advance of registration or record of this indenture.

352 The Trustee shall be entitled to reasonable compensation for all services rendered by it in the execution of the trust hereby created.

SEC. 2. The Trustee or any Trustee hereafter appointed may resign and be discharged of the trusts created by this indenture by giving notice thereof to the Railway Company and to the bondholders, by publication, at least twice a week, for four successive weeks, in a newspaper at that time published in the city of New York, in the State of New York, and one newspaper published in the city of Ogden in the State of Utah, and by due execution of the conveyance herein required.

The Trustee may be removed at any time by an instrument in writing under the hands of three-quarters in amount of the holders of the bonds hereby secured and then outstanding.

SEC. 3. In case at any time the said Central Trust Company of New York, or any Trustee hereafter appointed, shall resign or be removed or otherwise become incapable of acting, a successor, or successors, may be appointed by the holders of a majority in amount of the bonds hereby secured then outstanding, by an instrument or concurrent instruments signed by such bondholders or their attorneys in fact duly authorized; provided, nevertheless,

353 it is hereby agreed and declared, that in case at any time there shall be a vacancy in the office of Trustee hereunder, the Railway Company by an instrument executed by order of its board of directors, may appoint a Trustee to fill such vacancy until a new Trustee shall be appointed by the bondholders as here authorized. The Railway Company shall thereupon publish notice of such appointment once a week for six successive weeks in a newspaper published in the city of New York, in the State of New York, and a newspaper published in the city of Ogden, in the State of Utah, and any new Trustee so appointed by the Railway Company shall immediately and without further act be superseded by the Trustee appointed in the manner above provided by the holders of a majority in amount of the bonds hereby secured prior to the expiration of six months after such publication of notice. Every Trustee appointed in place of the Central Trust Company of New York, or its successor in the trust, shall always be a trust company in good standing, doing business in the city of New York, and having a capital and surplus aggregating at least \$2,000,000, if there

such a Trust Company willing and able to accept the trust upon reasonable or customary terms.

Any such new Trustee appointed hereunder shall execute, acknowledge, and deliver to the Trustee last in office and also to the Railway Company an instrument accepting such appointment hereunder, and thereupon such new Trustee without any further act, deed, or conveyance shall become vested with all the estates, properties, rights, powers, and trusts of its predecessor in the trust hereunder with like effect as if originally named as Trustee herein; but the Trustee ceasing to act shall, nevertheless, on the written request of the new Trustee, execute and deliver an instrument transferring to such new Trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the Trustee so resigning or removed, and shall duly assign, transfer, and deliver any property and moneys held by such Trustee to the new Trustee so appointed in its place.

Should any deed, conveyance, or instrument in writing from the Railway Company be required by any new trustee, for more fully and certainly vesting in and confirming to such new trustees such estate, rights, powers and duties, any and all such deeds, conveyances, and instruments in writing shall, on request, be made, executed, acknowledged, and delivered by it.

ARTICLE EIGHT.

The Railway Company will create a sinking fund, to be specially applied to the redemption and payment on or before their maturity of the bonds to be issued under and secured by this indenture, by setting apart out of the net income derived by it from the lines of railroad herein mortgaged the sum of twenty-five thousand dollars in the year 1900 and in each year thereafter, until all of said bonds, principal and interest, shall be redeemed or paid in trust to be used to redeem said bonds as follows: Notice shall be published in one daily paper in the city of New York and one daily paper in the city of San Francisco for such length of time as said board of directors may order, not less than four weeks, that bonds will be redeemed herewith, and inviting bids for the surrender of such bonds at prices to be named by the bidders; and upon reception of said bids the lowest bids shall be accepted and bonds redeemed to the extent of the money in the sinking fund, and all bonds so redeemed shall forthwith canceled, and the Trustee or Trustees hereunder notified of the party of the first part of the distinguishing numbers of the bonds so redeemed and canceled.

Railway company's possession till default.

SECTION 1. Until some default shall have been made in the due and punctual payment of the interest, or of the principal of the bonds hereby secured, or some part of such interest or principal, or in the due and punctual performance and observance of some covenant or condition hereof obligatory upon the Railway Company, and until such default shall have continued beyond the period of grace, if any herein provided in respect thereof, the Railway Company, its successors and assigns, shall be suffered and permitted to retain actual possession of all the premises hereby mortgaged, and to manage, operate, and use the same and every part thereof, with the rights and franchises appertaining thereto, and to collect, receive, take, use, and enjoy the tolls, earnings, income, rents, issues, and profits thereof.

SEC. 2. If, when the bonds hereby secured shall have become due and payable, the Railway Company shall well and truly pay, or shall cause to be paid, the whole amount of the principal money and the interest due upon all of the bonds and the coupons for interest thereon, hereby secured, and then outstanding, or shall provide for such payment by depositing with the Trustee hereunder for the payment of such bonds and coupons the entire amount due thereon for principal and interest, then and in such case all property, rights, and interests hereby conveyed shall revert to the Railway Company, and the estate, right, title, and interest of the Trustee or Trustees shall thereupon cease, determine, and become void, and the Trustee or Trustees in such case, on demand of the Railway Company and at its costs and expense, shall execute satisfaction of this indenture upon the record.

ARTICLE TEN.

Sundry provisions.

SECTION 1. All the covenants, stipulations, promises, and agreements in this indenture contained by or in behalf of the Railway Company shall bind its successors and assigns whether so expressed or not.

SEC. 2. Nothing contained in this indenture or in any bond hereby secured shall prevent any consolidation or merger of the Railway Company with any other corporation, or any conveyance and transfer, subject to the continuing lien of this indenture and to all the provisions thereof, of all the mortgaged premises as an entirety to a railroad corporation at that time existing under and by virtue of

58 of the laws of any State or States or the United States, and entitled to acquire the same; provided, however, that such consolidation, merger, or sale shall not impair the lien and security of this indenture or any of the rights or powers of the Trustee or of the bondholders hereunder, and that upon any such consolidation, merger, or sale, the due and punctual payment of the principal and interest of all of said bonds according to their tenor, and the due and punctual performance and observance of all the covenants and conditions of this indenture shall be assumed by the corporation formed by such consolidation or merger or purchasing as aforesaid.

SEC. 3. In case the Railway Company, pursuant to section 2 of this article, shall be consolidated or merged with any other corporation or shall sell, convey, and transfer, subject to this indenture, all the mortgaged premises as an entirety as aforesaid, the successor corporation formed by such consolidation or into which the Railway Company shall have been merged, or which shall have purchased and received a conveyance and transfer as aforesaid—upon executing, and causing to be recorded, an indenture with the Trustee, satisfactory to the Trustee, whereby such successor corporation shall
59 assume the due and punctual payment of the principal and interest of said bonds and the performance of all the covenants and conditions of this indenture—shall succeed to and be substituted for, the Railway Company, party of the first part hereto, with the same effect as if it had been named herein as such party of the first part, and such successor corporation thereupon may cause to be signed and may issue, either in its own name or in the name of the Central Pacific Railway Company, any or all of such bonds which shall not theretofore have been signed by the Railway Company and certified by the Trustee; and upon the order of said successor corporation in lieu of the Railway Company, and subject to all the terms, conditions, and restrictions herein prescribed, the Trustee shall certify and deliver any of such bonds which shall have been previously signed and delivered by the officers of the Railway Company to the Trustee for certification, and any of such bonds which such successor corporation shall thereafter cause to be signed and delivered to the said Trustee for that purpose. All the bonds so issued shall in all respects have the same legal rank and security as the bonds theretofore or thereafter issued in accordance with the terms of this indenture.

60 SEC. 4. For every purpose of this indenture, including the execution, issue, and use of any and all bonds hereby secured, the terms "Railway Company" and "the Central Pacific Railway Company" include and mean not only the party of the first part hereto, but also any such successor corporation. Every such successor corporation shall possess and from time to time may exercise

each and every right and power hereunder of the Central Pacific Railway Company in its name or otherwise.

SEC. 5. Any act or proceeding by any provision of this indenture required to be done or performed by any board or officer of the Railway Company shall and may be done and performed with like force and effect by the like board or officer of any railroad corporation that shall at the time be such lawful sole successor of the Railway Company.

SEC. 6. Except when otherwise indicated the words "the Trustee" or any other equivalent term as used in this indenture shall be held and construed to mean the Trustee or Trustees for the time being, whether original or successor, and the words "Trustee," "bondholder," and "holder" shall include the plural as well as the singular number, and the term "majority" shall signify "majority in amount."

361 The Central Trust Company of New York, Trustee, party hereto of the second part, hereby accepts the trusts in this indenture declared and provided and agrees to perform the same upon the terms and conditions hereinbefore set forth.

In order to facilitate the record of this indenture, the same may be simultaneously executed in counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same instrument.

In witness whereof the Central Pacific Railway Company, party hereto of the first part, has caused this indenture to be signed and acknowledged or proved by its president and its corporate secretary to be hereunto affixed, and the same to be attested by the signature of its secretary, and the Central Trust Company of New York, party of the second part, has caused its corporate seal to be hereunto affixed and attested by its secretary and these presents to be signed and acknowledged or proved by its president or vice president day and year first above written.

362

CENTRAL PACIFIC RAILWAY COMPANY

By THOMAS MARSHALL, *President*.

Signed, sealed, and delivered in the presence of Jonathan C. R. [Corporate seal of the Central Pacific Railway Company.]

Attest:

DAVID B. HEMPSTEAD, *Secretary*.

CENTRAL TRUST COMPANY OF NEW YORK

By E. FRANCIS HYDE, *2d Vice President*.

Signed, sealed, and delivered in the presence of J. R. Young. [Corporate seal of the Central Trust Company of New York.]

Attest:

B. G. MITCHELL, *Secretary*.

663 STATE OF UTAH,

County of Salt Lake, ss:

On this 1st day of August, A. D. 1899, before me, Lula Geoghegan, notary public in and for the county of Salt Lake, State of Utah, duly appointed and qualified, personally appeared the within-named Thomas Marshall, president of the Central Pacific Railway Company, and David B. Hempstead, secretary of the Central Pacific Railway Company, personally known to me to be the said officers of the said corporation, respectively, and the individuals described in and who executed the within instrument as such officers of said company; and they each severally and personally then and there acknowledged to me that they executed the said instrument as the free act and deed of the said Central Pacific Railway Company, free and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal as such notary public at my office in said county of Salt Lake, and State of Utah, the day and year last above written.

[SEAL.]

LULA GEOGHEGAN,
Notary Public.

64 My commission expires Sept. 17th, 1901.

[10-cent int. rev. stamp canceled.]

STATE OF UTAH,

County of Salt Lake, ss:

On this 1st day of August, A. D. 1899, personally appeared before me Thomas Marshall and David B. Hempstead, who, being by me, respectively, duly sworn, each for himself says that the said Thomas Marshall is the president of the Central Pacific Railway Company and the said David B. Hempstead is the secretary of said company, one of the corporations named in the foregoing instrument, and that said instrument was signed in behalf of said corporation by said president and secretary, respectively, under and in pursuance of a resolution of its board of directors; and the said Marshall and Hempstead, respectively, acknowledged to me that said corporation executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal in said county of Salt Lake, State of Utah, on this 1st day of August, A. D. 1899.

[SEAL.]

LULA GEOGHEGAN,
Notary Public.

65 My commission expires Sept. 17th, 1901.

[10-cent int. rev. stamp canceled.]

STATE OF UTAH,

County of Salt Lake, ss:

On this 1st day of August, A. D. 1899, before me, Lula Geoghegan, a notary public in and for the county of Salt Lake, State of Utah, duly commissioned and qualified, personally appeared Thomas B. Hempshall, known to me to be the president, and David B. Hempshall, known to me to be the secretary of the Central Pacific Railway Company, the corporation described in and which executed the within annexed instrument and acknowledged to me that said corporation executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal at my office in the city and county of Salt Lake, State of Utah, the day and year in this certificate first above written.

[SEAL.]

LULA GEOGHEGAN,
Notary Public

366 My commission expires Sept. 17th, 1901.
[10-cent int. rev. stamp cancelled.]

STATE OF NEW YORK, *County of New York, ss:*

On this eighth day of August, A. D. 1899, personally appeared before me, George H. Corey, a notary public in and for the county of New York, State of New York, duly appointed and qualified, and a commissioner of deeds for the State of New York, appointed under the laws of the State of Utah to take acknowledgments of deeds, E. Francis Hyde and Benjamin G. Mitchell, being by me respectively duly sworn, each for himself says that the said E. Francis Hyde, is the 2nd vice president of the Central Trust Company of New York, and the said Benjamin G. Mitchell is the secretary of said company, one of the corporations named in the foregoing instrument, and that said instrument was signed in behalf of said corporation by said 2nd vice president and secretary, respectively, under and in pursuance of a resolution of its board of trustees, and the said Hyde and Mitchell, respectively, acknowledged to me that said corporation executed the same.

367 In witness whereof I have hereunto set my hand and affixed my official seals in said county of New York, State of New York, on this eighth day of August, A. D. 1899.

[L. s.]

GEO. H. COREY *Notary Public*

My commission as notary public expires March 30, 1901.

[L. s.]

GEO. H. COREY,

*Commissioner of Deeds of the State of Utah
in and for the State of New York*

My commission as commissioner of deeds expires January 5, 1901.
[10-cent int. rev. stamp cancelled.]

STATE OF NEW YORK, *County of New York, ss:*

I, William Sohmer, clerk of the county of New York, and also clerk of the supreme court for the said county, the same being a court of record, do hereby certify that Geo. H. Corey, whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument and thereon written, was, at the time of taking such proof or acknowledgment, a notary public in and for the county of New York, dwelling in the said county, commissioned and sworn and duly authorized to take the same. And, further, that I am well acquainted with the handwriting of such notary, and verily believe that the signature to the said certificate of proof or acknowledgment is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county the 9th day of August, 1899.

[L. s.]

WM. SOHMER, *Clerk.*

[10-cent int. rev. stamp cancelled.]

STATE OF NEW YORK,

County of New York, ss:

On this eighth day of August, A. D. 1899, before me, George H. Corey, a notary public in and for the county of New York, State of New York, duly appointed and qualified, and a commissioner of deeds of the State of New York, duly appointed under the laws of the State of Nevada to take acknowledgments of deeds, personally appeared the within-named E. Francis Hyde, 2nd vice president of the

Central Trust Company of New York, and Benjamin G. Mitchell, secretary of the Central Trust Company of New

York, personally known to me to be the said officers of the said corporation, respectively, and the individuals described in and who executed the within instrument as such officers of said company, and they each, severally and personally, then and there, acknowledged to me that they executed the said instrument as the free act and deed of the said Central Trust Company of New York, freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seals as such notary public and commissioner of deeds, at my office in said county of New York and State of New York, the day and year last above written.

[L. s.]

GEO. H. COREY, *Notary Public.*

My commission as notary public expires March 30, 1901.

[L. s.]

GEO. H. COREY,

*Commissioner of Deeds of the State of Nevada
in and for the State of New York.*

My commission as commissioner of deeds expires January 23, 1900.

[10-cent int. rev. stamp cancelled.]

370 STATE OF NEW YORK,
County of New York, ss.:

I, William Sohmer, clerk of the county of New York, and clerk of the supreme court for the said county, the same being court of record, do hereby certify that Geo. H. Corey, whose name is subscribed to the certificate of the proof or acknowledgment of annexed instrument, and thereon written, was, at the time of taking such proof or acknowledgment, a notary public in and for the county of New York, dwelling in the said county, commissioned and sworn and duly authorized to take the same. And further, that I am well acquainted with the handwriting of such notary and verily believe that the signature to the said certificate of proof or acknowledgment is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court and county the 9th day of August, 1899.

[L. s.]

WM. SOHMER, Clerk

[10-cent int. rev. stamp, cancelled.]

371 STATE OF NEW YORK,
County of New York, ss.:

On this eighth day of August, A. D. 1899, before me, George H. Corey, a notary public in and for the county of New York, State of New York, duly commissioned and qualified, and a commissioner of deeds for the State of New York, duly appointed under the laws of the State of California to take acknowledgments of deeds, personally appeared E. Francis Hyde, known to me to be the vice president, and Benjamin G. Mitchell, known to me to be the secretary of the Central Trust Company of New York, the corporation described in and which executed the within annexed instrument, and acknowledged to me that said corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seals at my office in the city and county of New York, State of New York, the day and year in this certificate first above written.

GEO. H. COREY,

[L. s.]

Notary Public

My commission as notary public expires March 30, 1901.

372
 GEO. H. COREY,
Commissioner of Deeds of the State of California
in and for the State of New York
 [L. s.]
 My commission as commissioner of deeds expires October 28, 1901
 [10-cent int. rev. stamp, cancelled.]

STATE OF NEW YORK,

County of New York, ss:

I, William Sohmer, clerk of the county of New York, and also clerk of the supreme court for the said county, the same being a court of record, do hereby certify that Geo. H. Corey, whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument and thereon written, was, at the time of taking such proof or acknowledgment, a notary public in and for the county of New York, dwelling in the said county, commissioned and sworn, and duly authorized to take the same. And, further, that I am well acquainted with the handwriting of such notary and verily believe that the signature to said certificate of proof or acknowledgment is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county the 9th day of August, 1899.

[L. S.]

WM. SOHMER, *Clerk.*

[10-cent int. rev. stamp, cancelled.]

74 DEFENDANTS' EXHIBIT (MARSHALL) NO. 28, APRIL 15, 1915.

The Central Pacific Railway Company to the United States Trust Company of New York, Trustee.

Three and one-half per cent mortgage. Dated August 1, 1899.

[\$12,500 internal-revenue stamps affixed and cancelled.]

An indenture made the first day of August, one thousand eight hundred and ninety-nine, by and between the Central Pacific Railway Company, a corporation of the State of Utah (hereinafter called the "Railway Company"), party of the first part, and the United States Trust Company of New York, a corporation of the State of New York (hereinafter called the "Trustee"), party of the second part:

Whereas the Railway Company, party of the first part, is a corporation created by, and existing under and by virtue of, the laws of the State of Utah and holding franchises under acts of Congress of the United States, and now owns lines of railroad extending from a point about five miles west of Ogden, in the State of Utah, by way of Sacramento, in the State of California, to San Jose, in said last-mentioned State, and from Niles to Oakland, and Lathrop to Goshen, all in the State of California, and from Roseville, in the State of California, to the California and Oregon State boundary, besides equipment and terminals therefor and used in connection therewith; and

Whereas the said Railway Company is the owner of large amounts of land granted by the United States to the Central Pacific Railroad Company of California by an act of Congress approved on the day of July, 1862, entitled "An act to aid in the construction of railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes", and an act amendatory thereof approved on the second day of July, 1864, and large amounts of land granted to the California and Oregon Railroad Company by an act of Congress approved on the twenty-fifth day of July, 1866, entitled

376 "An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland in Oregon"; and

Whereas certain portions of the said lines of railroad and said lands owned by the said Railway Company are subject to the liens of certain mortgages severally and respectively securing bonds now outstanding (hereinafter called "outstanding old bonds") for the several aggregate principal sums following, to wit:

37 7	Series.	Amount.	Date of maturity.
	Series A.....	\$2,995,000	Matured.
	B.....	1,000	Matured.
		999,000	December 1, 1890
	C.....	4,000	Matured.
		996,000	December 1, 1890
	D.....	4,000	Matured.
		1,379,000	December 1, 1890
	Total.....	6,378,000	

(b) The Central Pacific Railroad Company of California first mortgage bonds secured by mortgage dated January 1, 1867, of the several series and for the amounts and now matured or maturing on the dates hereinafter mentioned, respectively, viz:

	Series.	Amount.	Date of maturity.
	Series E.....	\$5,000	Matured.
		3,990,000	June 1, 1900.
	F.....	9,000	Matured.
		3,990,000	June 1, 1901.
	G.....	13,000	Matured.
		3,985,000	June 1, 1901.
378	H.....	6,000	Matured.
		3,993,000	June 1, 1901.
	I.....	13,000	Matured.
		3,498,000	June 1, 1901.
	Total.....	19,502,000	

(c) The Western Pacific Railroad Company first-mortgage bonds secured by mortgage dated July 1, 1869, of the several series and for the amounts and which matured at the date hereinafter mentioned, viz:

Series A for \$1,970,000 matured July 1, 1899.

B 765,000 matured July 1, 1899.

Total-- 2,735,000

(d) The California and Oregon Railroad Company and Central Pacific Railroad Company, successor, first-mortgage bonds secured by mortgages dated January 1, 1868, and January 1, 1872, respectively, of the several series and for the amounts and maturing at the date hereinafter mentioned, viz:

Series A for \$5,982,000, maturing January 1, 1918.

B for 4,358,000, maturing January 1, 1918.

Total--10,340,000

(e) The Central Pacific Railroad Company first-mortgage bonds (San Joaquin Valley Division) secured by mortgage dated 1879 October 1, 1870, for the amount of \$6,080,000, maturing October 1, 1900.

(f) The Central Pacific Railroad Company fifty-year five per cent bonds secured by mortgage dated April 1, 1889, to the amount of \$12,283,000, maturing April 1, 1939, of which bonds to the amount of \$2,038,000 are held as security for the land bonds next hereinafter mentioned.

(g) The Central Pacific Railroad Company land bonds secured by mortgage dated October 1, 1870, to the amount of \$2,134,000 and maturing October 1, 1900.

And whereas heretofore and under date of February 1st, 1899, the said Central Pacific Railroad Company, in pursuance of a settlement agreement between the United States of America, the Central Pacific Railroad Company, and Messrs. Speyer & Co., dated February 1, 1899, entered into under the provisions of an act of Congress approved July 7th, 1898, executed its twenty promissory notes in favor of the United States of America for \$2,940,635.78 each, maturing on or before the expiration of each successive six months from the date thereof; and

Whereas the said Railway Company is about to issue its three and one-half per cent mortgage gold bonds to an amount which shall not in any event exceed in the aggregate the principal sum of twenty-five million dollars at any one time outstanding, and which shall bear interest at a rate not exceeding three and one-half per cent per annum payable semiannually, and to secure the same by mortgage upon the lines of railroad, equipment,

and terminals hereinafter described, with their appurtenances, and upon the lands and notes hereinafter referred to, and by deposit with the Trustee hereof of the sinking fund securities and moneys hereinafter mentioned; and

Whereas the issue of the said three and one-half per cent mortgage gold bonds and the execution of said mortgage to secure the same have been duly authorized by the board of directors of said Railroad Company, as per resolutions, copies of which are as follows:

"Resolved, That, for the purpose of readjusting the indebtedness secured by liens upon the properties of the company, and for other corporate purposes, this company issue its bonds, to be known as 'three and one-half per cent mortgage gold bonds', to an amount which shall not in any event exceed in the aggregate the principal sum of \$25,000,000 at any one time outstanding. Such bonds shall bear date August 1st, 1899, in the case of coupon bonds and of the time of their issue in the case of registered bonds shall become and be payable on the first day of August, 1929, in gold coin of the United States of the present standard of weight and fineness, and shall bear interest at a rate not exceeding three and one-half per centum per annum, payable semiannually in like gold coin on the first day of June and the first day of December in each year. Said bonds shall be issued either as coupon or registered bonds. The coupon bonds shall be for the principal sum of one thousand dollars or five hundred dollars each, and shall give to the holders the right to register the principal thereof, and also the right to convert the same into fully registered bonds. The registered bonds without coupons shall be each for the principal sum of one thousand dollars, or such multiples thereof as the company, by resolution of its board of directors, may from time to time prescribe and may be issued either originally as registered bonds or in exchange for coupon bonds for an equivalent sum. Such bonds, whether coupon bonds or registered bonds, shall be issued as shall be determined by the action of the board of directors or the executive committee of the company at such times and to such amounts as the purpose for which they are to be issued may require. When issued such bonds shall be signed by the president or any vice president of the company, and the corporate seal shall be thereunto affixed and attested by the secretary or any assistant secretary. In case the officers who shall have signed and sealed any such bonds shall cease to be officers of the company before the bonds so signed and sealed shall have been actually issued, certified, and delivered, such bonds may nevertheless be adopted and used by the company and may be issued, certified, and delivered as though the persons who signed and sealed such bonds had not ceased to be officers of the company. There shall be attached to the coupon bonds coupons for

the interest to grow due thereon, authenticated by the engraved signature of the treasurer or of any future treasurer of the company; and the company may adopt and use for that purpose the engraved signature of any person who shall have been such treasurer, notwithstanding the fact that such person may have ceased to be such treasurer when such bonds shall have been actually issued, certified, and delivered.

“Resolved, further, That in order to secure the payment of said bonds issued and to be issued, with interest thereon, this company execute a mortgage or deed of trust to the United States Trust Company of New York, a corporation of the State of New York, as Trustee, covering the properties of the company described in the printed form of mortgage now submitted to this board.

“Resolved, further, That the said printed form of mortgage now submitted to the board and the forms of bonds embodied therein be, and the same are hereby, approved, and that the president or any vice president, and the secretary or any assistant secretary, be, and they are hereby, authorized to execute the same on behalf of the company under its corporate seal.”

And whereas the said resolutions of the board of directors of the Railway Company were thereafter submitted to a meeting of the stockholders of the Railway Company duly called and held, and such action of the said board of directors was duly ratified and confirmed by resolution, a copy of which is as follows:

“Resolved, That the action of the board of directors in authorizing the issue of the three and one-half per cent mortgage gold bonds of the company, and the execution of the three and one-half per cent mortgage to secure the same, as set forth in the resolutions of the board of directors now submitted to this meeting, be, and the same is hereby, in all respects ratified, approved, and confirmed.”

And whereas the form of the coupon bonds and of the coupons to be attached thereto, and of the registered bonds, and of the Trustee's certificate to be signed by the United States Trust Company of New York, severally and respectively are to be substantially as follows, to wit:

[Form of coupon three and one-half per cent mortgage bonds.]

No. \$1,000 (or \$500).

United States of America. The Central Pacific Railway Company
three and one-half per cent mortgage gold bond.

Know all men by these presents that the Central Pacific Railway Company, a corporation, hereinafter called the “Railway Company”,

for value received, promises to pay to the bearer, or, if registered to the registered holder, of this bond, on the first day of August nineteen hundred and twenty-nine, at the office or agency of the Railway Company in the city of New York, one thousand (or five hundred) dollars, gold coin of the United States of the present standard of weight and fineness, and to pay interest thereon at the rate of three and one-half per cent per annum from August 1st, 1899, payable semiannually at the said office or agency like gold coin, on the first day of June and the first day of December in each year, but only upon presentation and surrender, as they are generally mature, of the coupons therefor annexed hereto.

Both the principal and interest of this bond are payable without deduction for any tax or taxes which the Railway Company may be required to pay, or to retain therefrom, under any present or future law of the United States, or of any State or county or municipality therein.

This bond is one of a series of three and one-half per cent mortgage gold bonds (coupon and registered) of the Railway Company issued and to be issued for an aggregate principal sum not exceeding twenty-five million dollars at any one time outstanding, under and in pursuance of, and all equally secured by, a mortgage or deed of trust, dated August 1st, 1899, executed by the Railway Company to the United States Trust Company of New York, as trustee, of the property and franchises of the Railway Company conveyed to said trust by said mortgage or deed of trust, to which reference is hereby made for a statement of the property and franchises so mortgaged, the nature and extent of the security, the rights of the holders of said bonds under the same, and the terms and conditions upon which said bonds are issued and secured.

This bond shall pass by delivery, unless registered in the owner's name on the books of the Railway Company at its office or agency in the city of New York, such registry being noted on the bond by the bond registrar of the Railway Company. After such registration no transfer shall be valid unless made on the company's books by the registered owner and similarly noted on the bond, but the same may be discharged from registry by being transferred to bearer, and thereafter transferability by delivery shall be restored, but this bond may again, from time to time, be registered or transferred to bearer as before. Such registration, however, shall not affect the negotiability of the coupons, which shall continue to be transferable by delivery merely.

The holder may also, at his option, surrender for cancellation this bond, with the coupons for future interest thereon, in exchange for a registered bond without coupons, as provided in said mortgage or deed of trust.

This bond shall not become obligatory for any purpose until it shall have been authenticated by the certificate, hereon endorsed, of the Trustee under said mortgage or deed of trust. In witness whereof the Central Pacific Railway Company has caused these presents to be signed by its president or one of its vice presidents, and its corporate seal to be hereunto affixed, and to be attested by its secretary or an assistant secretary, and coupons for said interest with the engraved signature of its treasurer to be attached hereto, this first day of August, 1899.

(The mortgage or deed of trust securing this bond has been duly stamped according to law.)

CENTRAL PACIFIC RAILWAY COMPANY,

[L. S.] By

Vice President.

Attest:

Assistant Secretary.

[Form of coupon.]

\$17.50 (or \$8.75).

On the first day of the Central Pacific Railway Company will pay to bearer, at its office or agency in the city of New York, fifteen 50/100 (or eight 75/100) dollars, United States gold coin of the present standard of weight and fineness, without deduction for taxes, being six months' interest then due on its three and one-half per cent mortgage gold bond No.

Treasurer.

[Form of registered three and one-half per cent mortgage bond.]

\$

United States of America. The Central Pacific Railway Company three and one-half per cent mortgage gold bond.

Know all men by these presents that the Central Pacific Railway Company, a corporation, hereinafter called the "Railway Company," for value received, promises to pay to , or registered assigns, the sum of dollars gold coin of the United States of the present standard of weight and fineness, on the first day of August, nineteen hundred and twenty-nine, at the office or agency of the Railway Company in the city of New York, and to pay interest thereon at the rate of three and one-half per cent. per annum from the first day of June or December next preceding the date

hereof, payable semiannually at said office or agency in like gold on the first day of June and the first day of December in each year until the payment of said principal sum.

Both the principal and interest of this bond are payable without deduction for any tax or taxes which the Railway Company may be required to pay, or to retain therefrom, under any present or future law of the United States, or of any State or county or municipality therein.

This bond is one of a series of three and one-half per cent mortgage gold bonds (coupon and registered) of the Railway Company issued and to be issued for an aggregate principal sum not exceeding twenty-five million dollars at any one time outstanding, under and in pursuance of, and all equally secured by, a mortgage or deed of trust dated August 1st, 1899, executed by the Railway Company to the United States Trust Company of New York, as trustee, of all the property and franchises of the Railway Company conveyed by and 390 trust in said mortgage or deed of trust, to which reference is hereby made for a statement of the property and franchises mortgaged, the nature and extent of the security, and the rights of the holders of said bonds under the same, and the terms and conditions upon which said bonds are issued and secured.

This bond is transferable by the registered holder thereof in person, or by attorney duly authorized, on the books of the Railway Company at its office or agency in the city of New York upon surrender and cancellation of this bond; and thereupon a new registered bond will be issued to the transferee in exchange herefor, provided in said mortgage or deed of trust, and on payment, if the Railway Company shall so require, of the charge therein provided for.

This bond shall not become obligatory for any purpose until it shall have been authenticated by the certificate, hereon endorsed, of the Trustee under said mortgage or deed of trust.

In witness whereof the Central Pacific Railway Company has caused these presents to be signed by its president or one of its presidents, and its corporate seal to be hereunto affixed, and to be attested by its secretary or an assistant secretary this 391

(The mortgage or deed of trust securing this bond has been duly stamped according to law.)

CENTRAL PACIFIC RAILWAY COMPANY,

[L. s.]

By

Vice President

Attest:

Assistant Secretary

[Form of trustee's certificate.]

This bond is one of a series of bonds described in the within-mentioned mortgage or deed of trust executed by the Central Pacific Railway Company to the undersigned.

UNITED STATES TRUST COMPANY OF NEW YORK, Trustee,

By

Vice President.

And whereas, in pursuance of such authority and of all and every legal power and authority in it vested, the Railway Company proposes now to make and execute, and from time to time hereafter to issue and to deliver bonds hereby secured; and in this indenture to declare the terms and conditions upon which every such bond is and shall be issued and secured:

92 Now, therefore, this indenture witnesseth: That in order to secure the payment of the principal and interest of all such bonds at any time issued and outstanding under this indenture, according to their tenor and effect, and the performance of all the covenants and conditions herein contained, and to declare the terms and conditions upon which such bonds are issued and received, the Railway Company, party of the first part, in consideration of the premises and of the purchase and acceptance of such bonds by the holders hereof and of the sum of one dollar to it duly paid by the Trustee at or before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, has executed and delivered these presents, and has granted, bargained, sold, released, conveyed, assigned, transferred, and set over, and by these presents does grant, bargain, sell, release, convey, assign, transfer, and set over unto the Trustee, party of the second part, its successors and assigns forever: All and singular the railroads, estates, rights, properties, privileges and franchises, lands, notes, sinking funds, and moneys described as follows, to wit:

First. The lines of railroad owned by the Railway Company extending from a point about five miles west of Ogden, in the State of Utah, through the States of Utah, Nevada, and 93 California, to and into the city of Sacramento, in the State of California, and from said Sacramento to San Jose, in said last-mentioned State, and from Niles to Oakland, and from Lathrop to Goshen, all in the State of California, and from Roseville, in said State of California, to the California and Oregon boundary;

Second. All the railways belonging to the party of the first part in San Francisco, Oakland, and Alameda, in the State of California, and the terminals belonging to the party of the first part, used in connection therewith, including wharves, piers, docks, embankments, ferries, steamers, and transfer and ferry boats;

Third. All roadbeds, superstructures, rights of way, rails, tracks, sidetracks, bridges, viaducts, terminals, buildings, depots, stations, warehouses, car houses, engine houses, freight houses, coal houses, wood houses, machine shops and other shops, turntables, water works, fences, docks, structures, erections and fixtures, and all other things of whatever kind, now owned or hereafter acquired by

Railway Company or its successors, which shall in any wise
394 at any time belong or appertain to, or be provided for
upon, or for the purposes of any of said lines of railroad
hereby mortgaged or intended to be mortgaged, and any and all other
property, real or personal, of every kind and description, now
hereafter acquired by the Railway Company or its successors
use upon or for the purposes of such lines of railroad or terminals
or any of them;

Fourth. Any and all locomotives, engines, cars, and other rolling
stock, equipment, machinery, instruments, tools, implements, materials,
furniture, and other chattels of the Railway Company now
owned or hereafter held, acquired, or provided by the Railway Company,
or its successors, for use upon any of such lines of railroad
terminals or other property hereby mortgaged;

Fifth. Any and all other railroads, equipment, and terminals
owned by the Central Pacific Railroad Company on the eighth day
of February, one thousand eight hundred and ninety-nine;

Sixth. Any and all corporate or other rights, privileges, and franchises
which the Railway Company now has, or which the Railway Company,
or its successors, hereafter shall acquire, possess, or become
entitled to for, or appertaining to, the construction, maintenance,
395 ance, use or operation of, such lines of railroad or terminals
or other property hereby mortgaged; and

Seventh. Any and all the rents, issues, profits, tolls, and other income
of such lines of railroad or terminals or other property now or at any
time hereafter subject to the lien of this indenture;

Eighth. All and singular the several sections of land granted to
the United States to the Central Pacific Railroad Company of California
by an act of Congress approved on the first day of July, 1862, entitled
"An act to aid in the construction of a railroad and telegraph line
from the Missouri River to the Pacific Ocean, and to secure to the
Government the use of the same for postal, military, and other purposes",
and an act amendatory thereof, approved on the second day of July,
1864; also all the lands granted to the California and Oregon Railroad
Company by an act of Congress approved on the twenty-fifth day of
July, 1866, entitled "An act granting land to aid in the construction
of a railroad and telegraph line from the Central Pacific Railroad in
California, to Portland, in Oregon"; and also all the estate, right, title,
interest, claim, and demand whatever

96 ever, at law or in equity, of, in, or to the same, or any part or parcel thereof, which the said Railway Company now has, holds, owns, or is entitled to, or hereafter may or shall acquire, have, hold, own, or be or become entitled to by force or virtue of the said acts of Congress, saving and excepting all parts and parcels of said lands which were sold prior to the execution of the mortgage from the Central Pacific Railroad Company to Charles Crocker and Elias W. Sanderson, dated the first day of October, A. D. 1870, securing the land bonds of said last-mentioned company, and all such parts and parcels of said lands as shall have been released from the said mortgage securing such land bonds in accordance with the provisions thereof before such mortgage securing said land bonds is satisfied and discharged, and saving, excepting, and reserving all parts and parcels of said lands which are or shall be included in the rights of way of the said railroads and telegraph lines of the said Railway Company or used for the construction or operation thereof, or for the track, yards, depot grounds, buildings, or erections thereon.

Ninth. All notes given in payment for lands covered by such mortgage of the Central Pacific Railroad Company, dated October 1, 1870, securing said land bonds, which shall be outstanding at 97 the time when such last-mentioned mortgage is satisfied and discharged.

Tenth. All securities and moneys which on the 8th day of February, 1899, were or have since been or shall be held in any sinking fund created or existing by or under any mortgage existing on said 8th day of February, 1899, whether of the Central Pacific Railroad Company or any divisional company by the consolidation whereof it was formed, the lien hereof to attach to such securities and moneys when and as they are respectively released and discharged from the lien of the mortgage or mortgages under which they are or shall be held, whereupon they shall be deposited with the Trustee of this indenture as security for the bonds issued hereunder to be held, administered, dealt with, and disposed of as hereinafter provided.

To have and to hold the premises, railroads, properties, real or personal, rights, franchises, estates and appurtenances, lands, land notes and securities, and moneys hereby conveyed and assigned, or intended to be conveyed or assigned, unto the Trustee and to its successors and assigns forever, but subject in respect of all thereof which are covered thereby to the mortgage from the said Railway Company to the Central Trust Company of New York, dated August 1, 98 1899, securing the Railway Company's first refunding mortgage bonds.

But in trust for the equal and proportionate benefit and security of all present and future holders of the bonds and interest obligations

issued and to be issued under and secured by this indenture, and the enforcement of the payment of said bonds and interest obligations when payable, and the performance of and compliance with covenants and conditions of this indenture without preference, priority, or distinction as to lien or otherwise of any one bond over other bond issued hereunder by reason of priority in the issue or negotiation thereof or otherwise howsoever.

And it is hereby covenanted and declared that all such bonds, with the coupons for interest thereon, are to be issued and certified and delivered, and that the mortgaged premises are to be held by the Trustee, subject to the further covenants, conditions, uses, and trusts hereinafter set forth, and it is covenanted between the parties hereto and for the benefit of the respective holders from time to time of bonds issued hereunder, as follows, viz:

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ARTICLE ONE.

Issue and appropriation of bonds.

SECTION 1. All bonds to be secured hereby from time to time shall be executed and delivered by the Railway Company to the Trustee hereunder for certification, and thereupon the said Trustee shall certify and deliver the same as provided in this article, and not otherwise. Any of such bonds from time to time, at the option of the Railway Company, may be executed, certified, and issued originally either as coupon bonds or as registered bonds. The aggregate amount of the bonds issued and outstanding under this indenture shall never at any one time exceed the principal sum of twenty-five million dollars (\$25,000,000).

Only such bonds as shall bear thereon endorsed such certificate of the said Trustee by it duly executed under the hand of its president, vice president, or second vice president shall be secured by this indenture or shall be entitled to any lien or benefit hereunder; and every such certificate of the said Trustee upon any bond executed on behalf of the Railway Company shall be conclusive evidence that the bond so certified has been duly issued hereunder and is entitled to the benefit of the trust hereby created.

400 Before certifying or delivering any coupon bond hereunder, the said Trustee shall cut off and cancel all coupons on such bond secured the said Trustee shall cut off and cancel all coupons thereof then matured, and the said Trustee shall not certify or deliver any registered bond bearing interest from any date more than six months prior to such certification or delivery.

SEC. 2. All of the bonds authorized to be issued under and secured by this indenture, viz, bonds to the aggregate amount of twenty-five million dollars (\$25,000,000), immediately upon the execution of

delivery hereof or as soon thereafter as from time to time may be required by the Railway Company, shall by the said Trustee be certified and delivered to the Railway Company or upon its order in writing under its corporate seal.

SEC. 3. Whenever any coupon bond or bonds issued under and secured by this indenture, together with all unmatured coupons hereto belonging, shall be surrendered for exchange for registered bonds the Railway Company shall issue and the said Trustee shall certify and deliver in exchange for such coupon bond or bonds a like amount of registered bonds without coupons. Such registered bonds shall be for \$1,000, or for such multiples thereof as from time to time the Railway Company may prescribe, and shall bear interest at the same rate as the surrendered coupon bonds and from the date of maturity of the last matured coupon thereof.

In every case of such exchange the said Trustee forthwith shall cancel the surrendered bond or bonds and coupons and shall deliver the same to the Railway Company.

Whenever any such registered bond shall be surrendered for transfer, the Railway Company shall issue, and the said Trustee shall certify and deliver to the transferee, upon surrender and cancellation of the bond or bonds transferred, a like amount of new registered bonds for \$1,000, or for such multiples of \$1,000 as the Railway Company from time to time may authorize, and bearing interest at the same rate as the surrendered registered bond; but no registered bond may be converted into a coupon bond.

For any exchange of coupon bonds for registered bonds, and for any transfer of registered bonds without coupons, the Railway Company, at its option, may make a charge not exceeding one dollar for each new registered bond issued upon such exchange or transfer.

SEC. 4. Upon surrender by the Railway Company to the Trustee for cancellation of any coupon or registered bonds issued hereunder and secured hereby, with a request that bonds be issued hereunder for the like amount at a reduced rate of interest, the Trustee shall certify and deliver to the Railway Company bonds issued hereunder and secured hereby to the amount at their face value of the bonds so surrendered, and carrying interest at such lower rate of interest than three and one-half per cent per annum, payable semiannually, as the Railway Company may prescribe in that behalf, and the new bonds so certified and delivered shall be entitled to share in the security of these presents with the like effect as if they had been bonds originally issued under this mortgage.

SEC. 5. In case any coupon bond issued hereunder, with the coupons thereto appertaining, or any registered bond without coupons, shall become mutilated or be destroyed, the Railway Company, in its discretion, may issue, and thereupon the said Trustee shall certify

and deliver, a new bond of like tenor and date, bearing the same distinguishing number, in exchange and substitution for, and upon cancellation of, the mutilated coupon bond and its coupons, or the mutilated registered bond, or in lieu of, and substitution for, the coupon bond and its coupons, or the registered bond so destroyed upon receipt of satisfactory evidence of the destruction of said coupon bond and its coupons, or of such registered bond, and upon receipt also of satisfactory indemnity.

SEC. 6. Nothing in this article, or in any other article, of this indenture, expressed or implied, is intended, or shall be construed to enlarge the security of the holders of any of said outstanding old bonds, or to create any trust in their favor, or to give to any person or corporation, other than the parties hereto and the holders of bonds issued under and secured by this indenture, any legal or equitable right, remedy, or claim, under or in respect of this indenture, or any covenant, condition, or provision herein contained; all its covenants, conditions, and provisions being intended to be, and being, for the sole and exclusive benefit of the parties hereto and of the holders of the bonds hereby secured.

ARTICLE TWO.

Particular covenants of the Railway Company.

The Railway Company covenants as follows:

SEC. 1. It will duly and punctually pay, or cause to be paid, to every holder of any bond issued and secured hereunder the principal and interest accruing thereon at the dates and place and in the manner mentioned in such bonds, or in the coupons thereto belonging according to the true intent and meaning thereof, without deduction from either principal or interest for any tax or taxes imposed by the United States, or any State or county or municipality thereof, which the Railway Company may be required to pay or to retain therefrom under or by reason of any present or future law. When, and as paid, all such coupons forthwith shall be cancelled.

SEC. 2. Whenever required by the Trustee, the Railway Company will grant, convey, confirm, assign, transfer, and set over unto the Trustee the estate, right, title, and interest of the Railway Company in or to all real and personal estate, corporate rights, and franchises which in any way or manner it shall acquire as appurtenant to or for the use of the railroads hereby mortgaged; and also it will do, execute, acknowledge, and deliver, or it will cause to be done, executed, acknowledged, and delivered all and every such further acts, deeds, transfers, and assurances for the better assuring, conveying,

and confirming unto the Trustee all and singular the premises, states, and property hereby conveyed, or intended so to be, as they or either of them shall reasonably require for better accomplishing the provisions and purposes of this indenture and for securing payment of the principal and interest of the bonds intended to be hereby secured.

But nothing in this indenture, expressed or implied, is intended or shall be construed to limit the right or power of the Railway Company, hereby expressly reserved, to own and hold, or to construct, or to acquire, other lines of railroad, or branches or extensions, or interests therein, or other property free from the lien hereof.

SEC. 3. The Railway Company at an office or agency to be maintained by it in the city of New York will keep a sufficient register or registers of bonds issued hereunder, which registers at all reasonable times shall be open to the inspection of the Trustee; and, upon presentation for such purpose, it will, under such reasonable regulations as it may prescribe, register therein any coupon bonds and any bonds without coupons issued under the provisions hereof.

Upon presentation of any such registered coupon bond bearing a written power to transfer the same executed by the registered holder, or the time being, in a form approved by the Railway Company, such bond shall be transferred upon such register. The registered holder of any such registered coupon bond also shall have the right to cause the same to be registered as payable to bearer, in which case transferability by delivery shall be restored, and thereafter the principal of such bond shall be payable to any person presenting the same; but any such coupon bond registered as payable to bearer may be registered again in the name of the holder with the same effect as a first registration thereof. Successive registrations and transfers as aforesaid may be made from time to time as desired; and each registration shall be noted by the bond registrar on the bond.

Any registered bond without coupons may be transferred by instrument in writing executed by the registered holder, upon the surrender of such bond, and the payment of the charge for such transfer, in which case new registered bonds for an equivalent amount will be issued to the transferee or transferees, as provided in section of article one hereof.

As to all bonds so registered, the person in whose name the same shall be registered shall, for all purposes of this indenture, be deemed and be regarded as the owner thereof, and thereafter payment of or an account of the principal of such bond, if it be a registered coupon bond, and of the principal and interest, if it be a registered bond without coupons, shall be made only to or upon the order of such

registered holder thereof, but such registration may be changed above provided. All such payments so made shall be valid, and effectual to satisfy and to discharge the liability upon such bonds to the extent of the sum or sums so paid.

407 Registration of any coupon bond shall, however, not restrict the negotiability of any coupon thereto belonging, but every such coupon shall continue to pass by delivery and shall remain payable to bearer.

SEC. 4. The Railway Company will well and truly pay and discharge upon presentation thereof for payment at or after maturity or will acquire and will deposit with the Trustee of said mortgage securing said first refunding mortgage bonds, all of the outstanding old bonds of the issues above mentioned; and it will punctually pay or cause to be paid, or, upon demand of the Trustee hereunder, will provide to its satisfaction for the payment of the interest on all said outstanding old bonds of said issues not acquired and deposited under said mortgage securing said first refunding mortgage bonds as and when such interest shall become due and payable, until all bonds of said issues shall have been finally paid and discharged, and all bonds shall have been acquired and deposited under said mortgage securing said first refunding mortgage bonds, and it will not extend the term of such outstanding old bonds and will not cause or suffer the same to be extended.

SEC. 5. The Railway Company will not voluntarily create or suffer to be created any lien or charge (except under such mortgage securing the Railway Company's first refunding mortgage bonds) having priority to or preference over the lien of the mortgage presents upon the mortgaged premises, or any part thereof, or upon the income thereof; and, within three months after the same shall accrue, it will pay or cause to be discharged, or will make adequate provision for the satisfaction or discharge of, all lawful claims and demands of mechanics, laborers, and others which, if unpaid, may by law be given precedence to this indenture as a lien or charge upon the mortgaged premises or any part thereof or the income thereof.

SEC. 6. The Railway Company from time to time will pay and discharge all taxes, assessments, and governmental charges lawfully imposed upon the lines of railroad and other premises hereby mortgaged, or upon any part thereof, or upon the income and profits thereof, the lien of which would be prior to the lien hereof, so that the priority of this indenture shall be fully preserved in respect to such properties; provided, however, that nothing contained in this section shall require the Railway Company to pay any such assessment, or charge so long as the Railway Company in good faith shall contest the validity thereof.

409 SEC. 7. The Railway Company will not issue, negotiate, sell, or dispose of any bonds hereby secured in any manner other than in accordance with the provisions of this indenture and the agreements in that behalf herein contained.

SEC. 8. So long as any of the bonds issued hereunder or any of the first refunding mortgage bonds of the Railway Company issued under and secured by its mortgage to the Central Trust Company of New York, dated August 1, 1899, or any of the four per cent bonds of the Southern Pacific Company issued under the mortgage of the last-mentioned company to the Union Trust Company of New York, dated August 1, 1899, are outstanding no other new mortgage shall be made of the properties covered by this mortgage or by the mortgage securing such first refunding mortgage bonds (except to refund such first refunding mortgage bonds and the bonds issued under and secured by this mortgage or either of such issues), and no other new mortgage except as aforesaid shall be made except with the assent of the holders of 75 per cent of the preferred stock and a majority of the common stock of the Railway Company at the time outstanding, and there shall be no increase of the preferred or common stock of the Railway Company without the like assent.

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ARTICLE THREE.

The lands, notes, securities, and moneys described in subdivisions eighth, ninth, and tenth of the granting clause.

The lands, notes, securities, and moneys described in articles eighth, ninth, and tenth of the granting clause hereof and the income and earnings therefrom shall be administered, dealt with, and disposed of as follows:

SECTION 1. While no default exists in respect to principal or interest of the bonds issued hereunder and secured hereby the Railway Company, at its discretion, may at any time or from time to time sell such lands and securities (free of and discharged from the lien hereof) and receive the proceeds thereof and collect the income from such lands and any amounts collectible on or on account of the principal of or interest on such securities or such notes, applying the proceeds thereof and collections therefrom (except so far as the same or any of them may be subject to any other lien or trust) as follows:

(a) The proceeds of the sale of such lands or securities, and of any other securities held on deposit under this mortgage, and collections on or on account of the principal of such securities or such notes, and any moneys held as security for the bonds issued hereunder (other than income from said lands or collections on or on account of interest on such securities or such notes) shall

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be forthwith applied by the said Railway Company to the purchase and cancellation of the bonds issued hereunder, while the same shall be purchasable at not above par and accrued interest; otherwise, at the purchase and cancellation, at the discretion of the Railway Company, either of the bonds issued hereunder, or of the said first funding mortgage bonds of the Railway Company, or of bonds secured by prior lien upon any of its properties, and the Railway Company shall forthwith deliver to the Trustee a certificate duly signed by its president or vice president and treasurer showing the application made thereof and submit to the inspection of the Trustee the bonds so purchased and canceled. Upon default of the Railway Company in its obligation to promptly make such application, the proceeds of such sale shall be paid to the Trustee upon its demand therefor, and the Trustee shall thereupon apply the same to the purchase and cancellation of bonds hereinafter before prescribed to be made by the Railway Company.

(b) All income from said lands or collections on or from the account of interest on such securities or such notes shall be applied primarily to the payment of the current interest on the bonds issued hereunder, and, when all such current interest shall have been paid or provided for, to the payment of any fixed charges secured by a lien prior to the lien of this mortgage upon the properties of the Railway Company, or any of them (including interest on the promissory notes in favor of the United States, executed and issued under the settlement agreement between the United States of America, the Central Pacific Railroad Company, and Speyer Company, dated February 1, 1899, hereinbefore referred to).

In the case of every application made by the Railway Company under this section it shall deliver to the trustee a certificate signed by its president or vice president and treasurer stating the facts of the transaction.

SEC. 2. In order to facilitate the sales, collections, and applications hereinbefore prescribed, the Trustee hereunder shall, while no default exists in respect to the principal or interest of the bonds issued hereunder—

(a) Release from the lien hereof such of said lands as shall have been sold by said Railway Company, when and as such sale thereof shall have been reported to it by the president or vice president and treasurer of the Railway Company, with full particulars as to the price and terms upon which such sales shall have been respectively made.

(b) Deliver (free of and discharged from the lien hereof) such securities to or upon the order of said Railway Company, upon being advised by the president or vice president and treasurer of said

company of the sale thereof and the price and terms upon which such sales shall have been made.

(c) Deliver (free of and discharged from the lien hereof) such securities, or coupons or interest obligations appertaining thereto, or such notes (if in possession of the Trustee) to or upon the order of said Railway Company, upon the written request of the president or vice president and treasurer of the Railway Company therefor for collection.

(d) Deliver (free of and discharged from the lien hereof) such moneys to the Railway Company upon the request of the president or vice president and treasurer of the Railway Company therefor and the promise of said Railway Company, signed by its president or vice president and treasurer, to forthwith apply the proceeds thereof as prescribed in section 1 of this article hereof.

SEC. 3. In case default should be made in respect to principal or interest of the bonds issued hereunder or secured hereby, then and in that event all income from said lands, and all collections on or on account of principal of or interest on such securities or such note, and any moneys held as security for the bonds issued hereunder, shall be applied by the Trustee to and for the purposes to and for which the same would have been applicable by the Railway Company in case such default had not taken place; but the securities or lands mortgaged hereby shall, while such default exists, be sold only under and in pursuance of the provisions of article four of this indenture, and while such default exists the power of sale hereof by the Railway Company shall be wholly suspended.

ARTICLE FOUR.

Remedies of trustee and bondholders.

SECTION 1. The Railway Company covenants and agrees that it will not, directly or indirectly, extend or assent to the extension of the time for payment of any coupon or claim for interest upon any bond secured hereby, and that it will not, directly or indirectly, be a party to any arrangement therefor by purchasing or funding said coupons or claims for interest on registered bonds or in any other manner. In case the payment of any such coupon or claim for interest should be so extended by or with the consent of the Railway Company, such coupon or claim for interest so extended shall not be entitled in case of default hereunder to the benefit or security of this indenture, except subject to the prior payment in full of the principal of all bonds issued hereunder and outstanding, and of all coupons and claims for interest on such bonds, the payment of which has not been so extended; the intention of this agreement being to

prevent any accumulation after maturity of coupons or claim for interest upon registered bonds.

SEC. 2. In case (1) default shall be made in the payment of interest on any bond or bonds secured by this indenture, or in performance of any of the covenants of the Railway Company contained in section 5 of article two hereof, and any such default shall have continued for a period of six months; or in case (2) default shall be made in the due and punctual payment of the principal of any bond hereby secured; or in case (3) default shall be made in the due observance or performance of any other covenant or condition herein required to be kept or performed by the Railway Company, and any such default under clause (3) hereof shall have continued for a period of six months after written notice thereof from the Trustee or from the holders of five per cent in amount of the bonds hereby secured, then, and in each and every such case, the Trustee personally, or by its agents or attorneys, may enter into and upon all or any part of the railways, rolling stock, property and premises, lands, rights, interest, and franchises hereby conveyed, and each and every part thereof, and may exclude the Railway Company,

417 agents and servants, wholly therefrom, and, having and holding the same, may use, operate, manage, and control said railways and other premises, regulate the tolls for the transportation of passengers and freight thereon, and conduct the business thereof either personally or by their superintendents, managers, receivers, agents, and servants or attorneys, to the best advantage of the holders of the bonds hereby secured; and upon every such entry of the Trustee, at the expense of the trust estate, from time to time, either by purchase, repairs, or construction, may maintain and restore, and insure or keep insured, the rolling stock, tools, and machinery and other property, buildings, bridges, and structures erected or provided for use in connection with said railways and other premises and whereof they shall become possessed, as aforesaid, in the same manner and to the same extent as is usual with railway companies, and likewise from time to time, at the expense of the trust estate may make all necessary or proper repairs, renewals, and replacements and useful alterations, additions, betterments, and improvements thereto and thereon as to them may seem judicious; and in such

case the Trustee shall have the right to manage the mortgage 418 premises, and to carry on the business and exercise all rights and powers of the Railway Company (except the power of sale of the lands and securities above referred to), either in the name of the Railway Company or otherwise, as the Trustee shall deem best; and it shall be entitled to collect and to receive all the earnings, incomes, rents, issues, and profits of the same and every part thereof; and after deducting the expenses of operating

railways and other premises, and of conducting the business thereof, and of all repairs, maintenance, renewals, replacements, alterations, additions, betterments, and improvements, and all payments which may be made for taxes, assessments, insurance, and prior or other proper charges, upon the said premises and property, or any part thereof, as well as just and reasonable compensation for its own services and for all agents, clerks, servants, and other employees by it properly engaged and employed it shall apply the moneys arising as aforesaid as follows:

In case the principal of the bonds hereby secured shall not have become due, to the payment of the interest in default, in the order of the maturity of the installments of such interest, with interest thereon at the rate of three and a half per cent per annum; such payments to be made ratably to the persons entitled thereto, without discrimination or preference,

In case the principal of the bonds hereby secured shall have become due, by declaration or otherwise, first, to the payment of the accrued interest (with interest on the overdue installments thereof at the rate of three and a half per cent per annum) in the order of the maturity of the installments, and then to the payment of the principal of all bonds hereby secured; in every instance such payments to be made ratably to the persons entitled to such payment, without any discrimination or preference,

These provisions, however, not being intended in any wise to modify the provisions of section 1 of this article.

SEC. 3. In case default shall be made in the payment of any interest on any bond or bonds hereby secured, or in the performance of any of the covenants of the Railway Company contained in section 5 of article two hereof, and any such default shall have continued for a period of six months, then and in every case of such continuing default, upon the written request of the holders of a majority in amount of the bonds hereby secured then outstanding, the Trustee, by notice in writing delivered to the Railway Company, shall declare the principal of all bonds hereby secured then outstanding to be due and payable immediately, and upon any such declaration the same shall become and be immediately due and payable, anything in this indenture or in said bonds contained to the contrary notwithstanding. This provision, however, is subject to the condition that, if at any time after the principal of said bonds shall have been so declared due and payable, all arrears of interest upon all such bonds, with interest at the rate of three and a half per cent per annum on overdue installments of interest, and the expenses of the Trustee, shall either be paid by the Railway Company, or be collected out of the mortgaged premises before any sale of the mortgaged premises shall have been made,

then and in every such case the holders of a majority in amount of the bonds hereby secured then outstanding, by written notice to the Railway Company and to the Trustee, may waive such default and its consequences; but no such waiver shall extend to or affect any subsequent default, or impair any right consequent thereon.

421 In case the Trustee shall have proceeded to enforce any right under this indenture, by foreclosure, entry, or otherwise, and such proceedings shall have been discontinued or abandoned because of such waiver, or for any other reason, 422 shall have been determined adversely to the Trustee, then, in every such case, the Railway Company and the Trustee shall be restored to their former position and rights hereunder in respect to the mortgaged premises and all rights, remedies, and powers of the Trustee shall continue as though no such proceedings had been taken.

SEC. 4. In case (1) default shall be made in the payment of any interest on any bond at any time issued under and secured by this indenture or in the performance of any of the covenants of the Railway Company contained in section 5 of article two hereof, and any such default shall have continued for a period of six months or in case (2) default shall be made in the due and punctual payment of the principal of any bond hereby secured; or in case (3) default shall be made in the due observance or performance of any other covenant or condition herein required to be kept or performed by the Railway Company, and any such default under clause (1) hereof shall have continued for a period of six months after written notice thereof from the Trustee or from the holders of five per cent in amount of the bonds hereby secured, then, and in each and every such case of default, provided, however, in respect of each of the 423 two cases so indicated, that such default shall have continued for six months, as above provided, the Trustee, with or without entry, personally or by attorney, in its discretion (a) may sell to the highest and best bidder all and singular the mortgaged property and premises, rights, franchises and interests, and appurtenances, and other real and personal property of every kind, and all right, title and interest, claim and demand therein, and right of redemption thereof, in one lot and as an entirety, except so far as a sale in parcels shall be required under the provisions of section 6 of this article to which extent such sale shall be made in parcels as in said section provided; which sale or sales shall be made at public auction at some place in the city of Ogden, in the State of Utah, or at such other place and at such time and upon such terms as the Trustee may determine and briefly specify in the notice of sale to be given as herein provided; or (b) immediately upon the expiration of the six months in the two cases so indicated, and immediately upon default in pay-

ent of principal in the other case, may proceed to protect and enforce their rights and the rights of bondholders under this indenture by a suit or suits in equity or at law, whether for the specific performance of any covenant or agreement contained herein or in aid of the execution of any power herein granted, or for the foreclosure of this indenture, or for the enforcement of any other appropriate legal or equitable remedy as the Trustee, being advised by counsel learned in the law, shall deem most effectual to protect and enforce any of their rights or duties hereunder.

Upon the written request of the holders of twenty-five per cent in amount of the bonds hereby secured, in case of any such continuing default, it shall be the duty of the Trustee, upon being indemnified hereinafter provided, to take all needful steps for the protection and enforcement of their rights and the rights of the holders of the bonds hereby secured, and to exercise the powers of entry or sale herein conferred, or both, or to take appropriate judicial proceedings by action, suit, or otherwise, as the Trustee, being advised by counsel learned in the law, shall deem most expedient in the interest of the holders of the bonds hereby secured.

SEC. 5. Anything in this indenture contained to the contrary notwithstanding, the holders of seventy-five per cent in amount of the bonds hereby secured and then outstanding, from time to time shall have the right to direct and to control the method and place of conducting any and all proceedings for any sale of the premises hereby conveyed, mortgaged, or pledged, or for the foreclosure of this indenture, or for the appointment of a receiver, or of any other proceedings hereunder.

SEC. 6. In the event of any sale, whether made under the power hereby granted and conferred, or under or by virtue of judicial proceedings, or of some judgment or decree of foreclosure and sale, the whole of the property hereby mortgaged (excepting only the lands, notes, securities, and moneys described in subdivisions eighth, ninth, and tenth of the granting clause hereof) shall be sold as one parcel and as an entirety, including all the rights, titles, estates, railroads, equipment, franchises, contracts, and other real and personal property of every name and nature (except as aforesaid), unless the holders of a majority in amount of the bonds hereby secured then outstanding shall in writing request the Trustee to cause said premises to be sold in parcels, in which case the sale shall be made in such parcels as may be specified in such request or petition, or unless such sale as an entirety is impracticable by reason of some statute or other cause; the lands, notes, and securities excepted from the foregoing provision are to be sold in such lots or parcels as may be determined by the Trustee hereunder, except that

each class of such securities must be sold separately, and this provision shall bind the parties hereto and each and every of the holders of the bonds and coupons hereby secured or intended so to be.

SEC. 7. Notice of any such sale pursuant to any provision of this indenture shall state the time and place when and where the same is to be made, and shall contain a brief general description of the property to be sold, and shall be sufficiently given if published once in each week for four successive weeks prior to such sale in a newspaper published in the city of New York, in the State of New York, and a newspaper published in the city of Ogden in the State of Utah, and otherwise as may be required by law.

SEC. 8. The Trustee from time to time may adjourn any sale to be made by it under the provisions of this indenture by announcement at the time and place appointed for such sale, or for such adjourned sale or sales, and without further notice or publication it may make such sale at the time and place to which the same shall be so adjourned.

SEC. 9. Upon the completion of any sale or sales under this indenture the Trustee shall execute and deliver to the accepted purchaser or purchasers a good and sufficient deed, or good and sufficient deeds, of conveyance of the property and franchises sold. And the Trustee and its successors are hereby appointed the true and lawful attorneys or attorney, irrevocable, of the Railway Company, in its name and stead to make all necessary deeds and conveyances of property thus sold; and for that purpose they may

426 execute all necessary acts of assignment and transfer, and the Railway Company hereby ratifying and confirming all that said attorney or attorneys shall lawfully do by virtue hereof.

Any such sale or sales made under or by virtue of this indenture, whether under the power of sale hereby granted and conferred, under or by virtue of judicial proceedings, shall operate to divest right, title, interest, claim, and demand whatsoever, either at law or in equity, of the Railway Company of, in, and to the premises sold, and shall be a perpetual bar, both at law and in equity, against the Railway Company, its successors and assigns, and against all persons claiming or to claim the premises sold, or any part thereof, from, through, or under the Railway Company, its successors or assigns.

The personal property and chattels conveyed, or intended to be conveyed, by or pursuant to this indenture (excepting only the lands, notes, securities, and moneys described in subdivisions eighth, ninth, and tenth of the granting clause hereof), shall be real estate for all the purposes of this indenture, and shall be held and taken to be fixtures and appurtenances of the said railroads and part thereof.

are to be used and sold therewith and not separate therefrom, except as herein otherwise provided.

SEC. 10. The receipt of the Trustee shall be a sufficient discharge to any purchaser of the property, or any part thereof as aforesaid, for the purchase money, and no such purchaser, or representatives, grantees, or assigns, after paying such purchase money and receiving such receipt, shall be bound to see to the application of such purchase money upon or for any trust or purpose of this indenture, or in any manner whatsoever be answerable for any loss, misapplication, or nonapplication of any such purchase money, or any part thereof, or be bound to inquire as to the authorization, necessity, expediency, or regularity of any such sale.

SEC. 11. In case of such sale, whether under the power of sale hereby granted or pursuant to judicial proceedings, the principal of the bonds hereby secured, if not previously due, immediately thereon shall become and be due and payable, anything in said bonds in this indenture contained to the contrary notwithstanding.

SEC. 12. The purchase money, proceeds, and avails of any such sale hereunder, whether under the power of sale hereby granted or pursuant to judicial proceedings, together with any other sums which may be held by the Trustee under any of the provisions of this indenture as part of the trust estate or of the proceeds thereof, shall be applied as follows:

First. To the payment of the costs and expenses of such sale, including a reasonable compensation to the Trustee, its agents, attorneys, and counsel, and of all expenses, liabilities, and advances made or incurred by the Trustee in managing and maintaining the property hereby conveyed, and to the payment of all taxes, assessments, or liens prior to the lien of these presents, except any taxes, assessments, or other superior liens to which such sales shall have been subject.

Second. To the payment of the whole amount then owing or unpaid on the bonds hereby secured for principal and interest, with interest at the rate of three and a half per cent per annum on the overdue installments of interest, and in case such proceeds shall be insufficient to pay in full the whole amount so due and unpaid upon the bonds, then to the payment of such principal and interest, without preference or priority of principal over interest, or of interest over principal, or of any installment of interest over any other installment of interest, ratably, to the aggregate of such principal and accrued and unpaid interest, subject, however, to the provisions of section 1 of this article.

Third. To the payment of the surplus, if any, to the Railway Company, its successors or assigns, or to whomsoever may be lawfully entitled to receive the same.

SEC. 13. In case of any sale hereunder any purchaser, for the purpose of making settlement or payment for the property purchased shall be entitled to turn in any bonds and any matured and uncoupons hereby secured, in order that there may be credited, as thereon, the sums payable out of the net proceeds of such sale to the holder of such bonds and coupons, as his ratable share of such proceeds, after allowing for the proportion of the total purchase price required to pay the costs and expenses of the sale, or otherwise, and such purchaser shall be credited, on account of the purchase price of the property purchased, with the sums payable out of such proceeds on the bonds and coupons so turned in; and, at any such sale, any bondholders may bid for and purchase such property, and may make payment on account thereof as aforesaid; and, upon compliance with the terms of sale, may hold, retain, and dispose of such property without further accountability therefor.

SEC. 14. The Railway Company will not at any time insist upon or plead, or in any manner whatever claim, or take the benefit or advantage of any stay or extension law now or at any time hereafter in force in any locality where the mortgaged premises, or any part thereof, may or shall be situate, nor will it claim, take, or insist on, any benefit or advantage from any law now or hereafter in force, providing for the valuation, or appraisement of the mortgaged premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provision herein contained, or to the decree of any court of competent jurisdiction; and after any such sale or sales will it claim or exercise any right under any statute enacted by any State, to redeem the property so sold or any part thereof; and it hereby expressly waives all benefit and advantage of any such law or laws; and it covenants that it will not hinder, delay, or impede the execution of any power herein granted and delegated to the Trustee, but that it will suffer and permit the execution of every such power, as though no such law or laws had been made or enacted.

SEC. 15. In case the Railway Company shall make default in any of the respects mentioned in section 3 of article four hereof, and there shall be any judgment outstanding against the Railway Company unsecured by bond on appeal; or in case any judicial proceeding by any party other than the Trustee, a receiver shall be appointed of the Railway Company, or a judgment or order be entered for the sequestration of its property, the Trustee shall thereupon be entitled forthwith to exercise the right of entry herein conferred, and also any and all other rights and powers herein conferred and provided to be exercised by the Trustee upon the occurrence and continuance of default as hereinbefore provided, and as matters

of right the Trustee shall thereupon be entitled to the appointment of a receiver of the premises hereby mortgaged, and of the earnings, income, revenue, rents, issues, or profits thereof, with such powers as the court making such appointment shall confer.

Sec. 16. The Railway Company, at any time before full payment of the bonds hereby secured and whenever it shall deem it expedient for the better protection and security of such bonds, although there be then no default entitling the Trustee to enter into possession, with the consent of the Trustee may surrender and deliver to the Trustee full possession of the whole or any part of the property, premises, and interests hereby conveyed or intended so to be for any period, fixed or indefinite. Upon such surrender and delivery to the Trustee, with its consent, the Trustee shall enter into and upon the premises so surrendered and delivered and shall take and receive possession thereof for such period, fixed or indefinite, as aforesaid, without prejudice, however, to their right at any time subsequently, when entitled thereto by any provision hereof, to insist upon and to maintain such possession, though beyond the expiration of any prescribed period. Upon any such voluntary surrender and delivery of said property and premises or of any part thereof the Trustee, from the time of its entry, shall work, maintain, use, manage, control, and employ the same in accordance with the provisions of this indenture, and shall receive and apply the income and revenues thereof as provided in section 2 of this article.

Sec. 17. No holder of any bond or coupon hereby secured shall have any right to institute any suit, action, or proceeding in equity or at law for the foreclosure of this indenture or for the execution of any trust thereof or for the appointment of a receiver or for any other remedy hereunder, unless such holder previously shall have given to the Trustee written notice of such default and of the continuance thereof, as hereinbefore provided; nor unless, also, the holders of twenty-five per cent in amount of the bonds hereby secured then outstanding shall have made written request upon the Trustee, and shall have afforded to it reasonable opportunity, either to proceed to exercise the powers hereinbefore granted or to institute such action, suit, or proceeding in its own name; nor unless, also, they shall have offered to the Trustee adequate security and indemnity against the costs, expenses, and liabilities to be incurred therein or thereby; and such notification, request, and offer of indemnity are hereby declared in every such case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of this indenture and to any action or cause of action, for foreclosure or for the appointment of a receiver or for any other remedy hereunder, it being understood and

intended that no one or more holders of bonds and coupons shall have any right in any manner whatever to affect, disturb, or prejudice the lien of this indenture by his or their action, or to enforce any remedy hereunder, except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had, and maintained in the manner herein provided and for the equal benefit of all holders of such outstanding bonds and coupons.

435 SEC. 18. Except as herein expressly provided to the contrary, no remedy herein conferred upon, or reserved to, the Trustee or to the holders of bonds hereby secured is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity or by statute.

SEC. 19. No delay or omission of the Trustee, or of any holder of bonds hereby secured, to exercise any right or power accruing upon any default continuing as aforesaid shall impair any such right or power, or shall be construed to be a waiver of any such default, or an acquiescence therein; and every power and remedy given by this article to the Trustee or to the bondholders may be exercised from time to time and as often as may be deemed expedient by the Trustee or by the bondholders severally and respectively.

SEC. 20. Notwithstanding any entry of any trustee or trustees, receiver or receivers, into possession of the properties, rights, franchises, and premises hereby mortgaged, or any of them, the United States shall be entitled to have and enjoy the provisions embodied in article sixth of the settlement agreement between the United

States of America, the Central Pacific Railroad Company, and
436 Messrs. Speyer & Company, dated February 1, 1899, hereinbefore referred to, whereby it is provided as follows:

"Until the notes to be given by the Central Pacific Railroad Company under article second of this agreement shall have been paid in full, principal and interest, all amounts due to the Central Pacific Railroad Company or its successor company from the United States subsequent to the date of this agreement in respect of services to the United States, upon the bond-aided lines from a point about five miles west of Ogden to Sacramento and from Sacramento to San Jose, above referred to, shall, as audited and allowed, be applied by the United States pro rata on account of the amounts remaining unpaid on such of said notes as shall not have been purchased by Messrs. Speyer & Co. hereunder, such application being first made to the payment of accrued interest thereon and thereafter on account of the principal thereof."

ARTICLE FIVE.

Immunity of officers, directors, and stockholders.

No recourse under or upon any obligation, covenant, or agreement of this indenture, or of any bond or coupon hereby secured, shall be had against any incorporator, stockholder, officer, or director of the Railway Company, or of any successor corporation, either directly or through the Railway Company, by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any statute or otherwise, it being expressly agreed and understood that this mortgage and the obligations hereby secured are solely corporate obligations and that no personal liability whatever shall attach to or be incurred by the incorporators, stockholders, officers, or directors of the Railway Company, or of any successor corporation, or any of them, under or by reason of any of the obligations, covenants, or agreements contained in this indenture, or in any of the bonds or coupons hereby secured or implied therefrom, and that any and all personal liability of every name and nature, either in common law or in equity or by statute or constitution, of every such incorporator, stockholder, officer, or director is hereby expressly waived as a condition of and consideration for the execution and issue of this mortgage and such bonds and coupons.

ARTICLE SIX.

Bondholders' acts, holdings, and apparent authority.

SECTION 1. Any request or other instrument required by this indenture to be signed and executed by bondholders may be in any number of concurrent instruments of similar tenor and may be signed or executed by such bondholders in person or by agent appointed in writing. Proof of the execution of any such request or other instrument or of a writing appointing any such agent and of the holding by any person of coupon bonds transferable by delivery shall be sufficient for any purpose of this indenture if made in the following manner:

SEC. 2. The fact and date of the execution by any person of any such request or other instrument or writing may be proved by the certificate of any notary public or other officer authorized to take acknowledgments of deeds to be recorded in New York, that the person signing such request or other instrument acknowledged to him the execution thereof or by an affidavit of a witness of such execution.

SEC. 3. The amount of coupon bonds transferable by delivery held by any person executing any such request or other instrument as a

bond holder, and the amounts and issue numbers of the bonds
439 held by such person, and the date of his holding the same,
be proved by a certificate executed by any trust company, bank,
bankers, or other depository (wherever situated) if such certificate
shall be deemed by the Trustee to be satisfactory, showing that
at the date therein mentioned such person had on deposit with
such depository the bonds therein described. The ownership of
registered coupon bonds or of registered bonds without coupons shall
be proved by the registers of such bonds as provided in section 3
article two hereof. Such proof shall be conclusive in favor of the
Trustee with regard to any action by them taken under such register
or other instrument.

SEC. 4. The bearer of any coupon bond hereby secured, which
the time shall not be registered as hereinbefore authorized, and the
bearer of any coupon for interest on any such bond, whether the
same shall be registered or not, may be deemed and treated by the
Railway Company and the Trustee as the absolute owner of such
bond or coupon, as the case may be, for the purpose of receiving payment
thereof, and for all other purposes, and no notice to the contrary
shall affect the Railway Company or the Trustee.

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ARTICLE SEVEN.

Releases of mortgaged property.

SEC. 1. Upon the written request of the Railway Company, as
proved by resolution of its board of directors or executive committee,
the Trustee, from time to time while the Railway Company is in
possession of the mortgaged premises, but subject to the conditions
and limitations in this section prescribed, and not otherwise, shall
release from the lien and operation of this indenture any part of
the mortgaged premises then subject thereto (except the lands, notes,
securities, and moneys described in subdivisions eighth, ninth, and
tenth of the granting clause hereof, the administration and disposition
of which are dealt with in article three hereof); provided (1) that
no part of the lines of track or of the rights of way shall be released,
unless the same shall no longer be of use in the operation of any
of the mortgaged lines of railway, and no part of such line of track
or rights of way shall be so released if thereby the continuity of the
lines of railway of the Railway Company between the several termini
above mentioned shall be broken; and (2) that no part of the
mortgaged railways or other property shall be released hereunder,
unless at the time of such release it shall no longer be necessary
or expedient to retain the same for the operation, maintenance, or
use of such lines of railway or for use in the business of the Railway
Company.

No such release shall be made under this section unless the Railway Company shall have sold, or shall have contracted to exchange for other property, or to sell the property so to be released; and unless some other disposition thereof be required by some prior mortgage (and except as provided in article three hereof in respect to the lands, notes, securities, and moneys therein referred to) the proceeds of any and all such sales and all moneys received as compensation for any property subject to this indenture, taken by exercise of the power of eminent domain, shall be set apart and held in trust and applied, with approval of the said Trustee, to the purchase of other property, real or personal, or in betterments of or additions to or rolling stock for any part of the mortgaged premises. Any new property acquired by the Railway Company to take the place of any property released under this section, ipso facto, shall become and be subject to the lien of this indenture as fully as if specifically mortgaged hereby; but, if requested by the said Trustee, the Railway Company will convey the same to the Trustee by appropriate deeds upon the trusts and for the purposes of this indenture.

SEC. 2. The Railway Company, while in possession of the mortgaged premises, shall also have full power, in its discretion from time to time, to dispose of any portion of the machinery, equipment, and implements, at any time held subject to the lien hereof, which may have become unfit for such use, replacing the same by new machinery, equipment, or implements, which shall become subject to this indenture.

SEC. 3. In no event shall any purchaser or purchasers of any property sold or disposed of under any provision of this article be required to see to the application of the purchase money.

SEC. 4. In case the mortgaged premises shall be in the possession of a receiver lawfully appointed, the powers in and by this article conferred upon the Railway Company may be exercised by such receiver with the approval of the Trustee; and if the Trustee shall be in possession of the mortgaged premises under any provision of this indenture, then all the powers by this article conferred upon the Railway Company may be exercised by the Trustee in its discretion.

SEC. 5. The Railway Company from time to time may make changes or alterations in or substitutions of any leases or trackage rights subject to this indenture; but in any such event any modified, altered, or substituted leases or trackage rights herewith shall become bound by, and be subject to, the terms of this indenture in the same manner as those previously existing.

SEC. 6. A certificate signed by the president, or a vice president, and the chief engineer of the Railway Company may be received by the said Trustee as conclusive evidence of any of the facts mentioned

in this article, and shall be full warrant to the said Trustee for action on the faith thereof; but the said Trustee, in its discretion may require such further and additional evidence as to it may be reasonable.

ARTICLE EIGHT.

Concerning the trustee.

SECTION 1. The Trustee shall not be answerable for the default or misconduct of any agent or attorney appointed by it in pursuance hereof if such agent or attorney shall have been selected with reasonable care; or for anything whatever in connection with this trust

except willful misconduct or gross negligence. The Trustee shall not be personally liable for any debt contracted by it, or for damages to persons or property carried or injured, or for salaries or nonfulfillment of contracts during any period when the Trustee shall manage the trust property or premises upon express or voluntary surrender as aforesaid. The Trustee shall not be under any obligation to take any action toward the execution or enforcement of the trusts hereby created, which, in its opinion, shall be likely to involve it in expense or liability, unless one or more of the holders of the bonds hereby secured shall, as often as required by the Trustee, furnish it reasonable indemnity against such expense or liability; nor shall the Trustee be required to take notice of any default hereunder unless notified in writing of such default by the holders of at least five per cent in amount of the bonds hereby secured then outstanding, or to take any action in respect of any default unless requested to take action in respect thereof by a writing signed by the holders of not less than twenty-five per cent in amount of the bonds hereby secured then outstanding, and tendered reasonable indemnity as aforesaid, anything herein contained to the contrary notwithstanding; but neither any such notice or request nor the provision therefor shall affect any discretion herein given to the Trustee to determine whether or not it shall take action in respect of such default, or to take action without such request. The Trustee shall not be responsible for the recording of this indenture and shall not be required to file the same as a chattel mortgage.

The Railway Company covenants that it will cause record of this instrument as a mortgage of real estate to be made with all convenient speed; on request of the Railway Company the Trustee hereunder may certify and deliver bonds hereunder to the amount within the limit hereinbefore prescribed in advance of registration or record of this indenture, or delivery of the notes, securities, moneys mortgaged or to be mortgaged hereunder.

The Trustee shall be entitled to reasonable compensation for all services rendered by it in the execution of the trusts hereby created.

SEC. 2. The Trustee or any trustee hereafter appointed may resign, and be discharged of the trusts created by this indenture by giving notice thereof to the Railway Company and to the bondholders, by publication, at least twice a week, for four successive weeks, in one newspaper at that time published in the city of New York, 46 in the State of New York, and one newspaper published in the city of Ogden, in the State of Utah, and by due execution of the conveyance herein required.

The Trustee may be removed at any time by an instrument in writing under the hands of three-quarters in amount of the holders of the bonds hereby secured and then outstanding.

SEC. 3. In case at any time the said United States Trust Company of New York, or any trustee hereafter appointed, shall resign or be removed or otherwise become incapable of acting, a successor or successors may be appointed by the holders of a majority in amount of the bonds hereby secured then outstanding, by an instrument or concurrent instruments signed by such bondholders or their attorneys in fact duly authorized: Provided, nevertheless, and it is hereby agreed and declared that, in case at any time there shall be a vacancy in the office of trustee hereunder, the Railway Company, by an instrument executed by order of its board of directors, may appoint a trustee to fill such vacancy until a new trustee shall be appointed by the bondholders as herein authorized. The Railway Company shall thereupon publish notice of such appointment once a week for six successive weeks in a newspaper published in the city of New

York, in the State of New York, and a newspaper published 47 in the city of Ogden, in the State of Utah, and any new trustee so appointed by the Railway Company shall immediately and without further act be superseded by a trustee appointed in the manner above provided by the holders of a majority in amount of the bonds hereby secured prior to the expiration of six months after such publication of notice. Every such trustee appointed in place of the United States Trust Company of New York, or its successor in the trust, shall always be a trust company in good standing, doing business in the city of New York, and having a capital and surplus aggregating at least \$2,000,000, if there be such a trust company willing and able to accept the trust upon reasonable or customary terms.

Any such new trustee appointed hereunder shall execute, 48 acknowledge, and deliver to the trustee last in office and also to the Railway Company an instrument accepting such appointment hereunder, and thereupon such new trustee without any further act, deed, or conveyance shall become vested with all the states, properties, rights, powers, and trusts of its predecessor in

the trust hereunder with like effect as if originally named as trustee herein; but the trustee ceasing to act shall, nevertheless, on the written request of the new trustee, execute and deliver an instrument transferring to such new trustee, upon the trusts herein expressed, the estates, properties, rights, powers, and trusts of the trustee resigning or removed, and shall duly assign, transfer, and deliver any property and moneys held by such trustee to the new trustee appointed in its place.

Should any deed, conveyance, or instrument in writing from the Railway Company be required by any new trustee, for more fully and certainly vesting in and confirming to such new trustee the estate, rights, powers, and duties, any and all such deeds, conveyances and instruments in writing shall, on request, be made, executed, acknowledged, and delivered by it.

449

ARTICLE NINE.

The Railway Company will create a sinking fund, to be specially applied to the redemption and payment on or before their maturity of the bonds to be issued under and secured by this indenture by setting apart out of the net income derived by it from the line of railroad herein mortgaged the sum of twenty-five thousand dollars in the year 1900, and in each year thereafter, until all of said bonds principal and interest, shall be redeemed or paid, in trust to be used to redeem said bonds as follows: Notice shall be published in a daily paper in the city of New York for such length of time as the board of directors may order, not less than twice a week for four weeks, that bonds will be redeemed therewith, and inviting bids for the surrender of such bonds at prices to be named by the bidder, and, upon reception of said bids, the lowest bid or bids shall be accepted, and bonds redeemed to the extent of the money in the sinking fund and all bonds so redeemed shall be forthwith canceled, and the trustee or trustees hereunder notified by the party of the first part of the distinguishing numbers of the bonds so redeemed and canceled.

450

ARTICLE TEN.

Railway Company's possession till default.

SECTION 1. Until some default shall have been made in the due and punctual payment of the interest, or of the principal of the bonds hereby secured, or some part of such interest or principal, or in the due and punctual performance and observance of such covenant or condition hereof obligatory upon the Railway Company, and until such default shall have continued beyond the period of grace, if any, herein provided in respect thereof, the Railway Company

any, its successors and assigns, shall be suffered and permitted to obtain actual possession of all the premises hereby mortgaged (except the securities and moneys referred to in subdivision tenth of the granting clause hereof), and to manage, operate, and use the same and every part thereof, with the rights and franchises appertaining thereto, and to collect, receive, take, use, and enjoy the tolls, earnings, income, rents, issues, and profits thereof.

Sec. 2. If, when the bonds hereby secured shall have become due and payable, the Railway Company shall well and truly pay, or shall cause to be paid, the whole amount of the principal moneys and the interest due upon all of the bonds and the coupons for interest thereon, hereby secured, and then outstanding, or shall provide for such payment by depositing with the trustee hereunder for the payment of such bonds and coupons the entire amount due thereon for principal and interest, then and in that case all property, rights, and interests hereby conveyed shall revert to the Railway Company, and the estate, right, title, and interest of the trustee or trustees shall thereupon cease, determine, and become void, and the trustee or trustees in such case, on demand of the Railway Company and at its cost and expense, shall enter satisfaction of this indenture upon the records, and deliver to the Railway Company, its successors and assigns, all securities, moneys, or other property held by it as trustee hereunder.

ARTICLE ELEVEN.

Sundry provisions.

SECTION 1. All the covenants, stipulations, promises, and agreements in this indenture contained, by or in behalf of the Railway company, shall bind its successors and assigns, whether so expressed or not.

Sec. 2. Nothing contained in this indenture, or in any bond hereby secured, shall prevent any consolidation or merger of the Railway company with any other corporation, or any conveyance and transfer, subject to the continuing lien of this indenture and to all the provisions thereof, of all the mortgaged premises as an entirety to a railroad corporation at that time existing under and by virtue of the laws of any State or States or the United States, and entitled to acquire the same; provided, however, that such consolidation, merger, or sale shall not impair the lien and security of this indenture, or any of the rights or powers of the trustee, or of the bondholders hereunder, and that upon any such consolidation, merger, or sale the due and punctual payment of the principal and interest of all of said bonds according to their tenor,

and the due and punctual performance and observance of all the covenants and conditions of this indenture, shall be assumed by the corporation formed by such consolidation or merger or purchase as aforesaid.

SEC. 3. In case the Railway Company, pursuant to section 2 of this article, shall be consolidated or merged with any other corporation, or shall sell, convey, and transfer, subject to this indenture, all the mortgaged premises as an entirety as aforesaid, the successor corporation formed by such consolidation or into which the Railway Company shall have been merged, or which shall have purchased and received a conveyance and transfer as aforesaid—upon executing, and causing to be recorded, an indenture with the Trustee, satisfactory to the Trustee, whereby such successor corporation shall assume the due and punctual payment of the principal and interest of said bonds and the performance of all the covenants and conditions of this indenture—shall succeed to and be substituted for the Railway Company, party of the first part hereof, with the same effect as if it had been named herein as such party of the first part, and such successor corporation thereupon may cause to be signed and may issue, either in its own name or in the name of the Central Pacific Railway Company, any or all of said bonds which shall not theretofore have been signed by the Railway Company and certified by the Trustee; and upon the order of said successor corporation in lieu of the Railway Company, and subject to all the terms, conditions, and restrictions herein prescribed, the Trustee shall certify and deliver any of such bonds which shall have been previously signed and delivered by the officers of the Railway Company to the Trustee for certification, and any of said bonds which such successor corporation shall thereafter cause to be signed and delivered to the said Trustee for that purpose. All the bonds so issued shall in all respects have the same legal rank and security as the bonds theretofore or thereafter issued in accordance with the terms of this indenture.

SEC. 4. For every purpose of this indenture, including the execution, issue, and use of any and all bonds hereby secured, the terms "Railway Company" and "The Central Pacific Railway Company" include and mean not only the party of the first part hereto, but also any such successor corporation. Every such successor corporation shall possess and from time to time may exercise each and every right and power hereunder of the Central Pacific Railway Company, in its name or otherwise.

SEC. 5. Any act or proceeding by any provision of this indenture required to be done or performed by any board or officer of the Railway Company shall and may be done and performed with the same force and effect by the like board or officer of any railroad corporation.

ion that shall at the time be such lawful sole successor of the Railway Company.

SEC. 6. Except when otherwise indicated, the words "the trustee", or any other equivalent term, as used in this indenture shall be held and construed to mean the trustee or trustees for the time being, whether original or successor, and the words "trustee," "bond," "bondholder," and "holder" shall include the plural as well as the singular number, and the term "majority" shall signify "majority in amount."

56 The United States Trust Company of New York, trustee, party hereto of the second part, hereby accepts the trusts in this indenture declared and provided and agrees to perform the same upon the terms and conditions hereinbefore set forth.

In order to facilitate the record of this indenture the same may be simultaneously executed in counterparts, each of which so executed shall be deemed to be an original; and such counterparts shall together constitute but one and the same instrument.

In witness whereof the Central Pacific Railway Company, the party hereto of the first part, has caused this indenture to be signed and acknowledged or proved by its president, and its corporate seal to be hereunto affixed, and the same to be attested by the signature of its secretary, and the United States Trust Company of New York, the party of the second part, has caused its corporate seal to be hereunto affixed and attested by its secretary, and these presents to be signed and acknowledged or proved by its president or vice president the day and year first above written.

57 CENTRAL PACIFIC RAILWAY COMPANY,
By THOMAS MARSHALL, *President*.

Signed, sealed, and delivered in the presence of—

JONATHAN C. ROYLE.

Attest:

DAVID B. HEMPSTEAD, *Secretary*.

[Corporate seal of the Central Pacific Railway Company.]

UNITED STATES TRUST COMPANY OF NEW YORK,

By J. S. CLARK, *Second Vice President*.

Signed, sealed, and delivered in the presence of—

GEO. H. COREY.

Attest:

H. L. THORNELL, *Secretary*.

[Corporate seal of the United States Trust Company of New York.]

58 STATE OF UTAH,

County of Salt Lake, ss:

On this 1st day of August, A. D. 1899, before me, Lula Geoghegan, notary public in and for the county of Salt Lake, State of Utah,

duly appointed and qualified, personally appeared the within-
 Thomas Marshall, president of the Central Pacific Railway Company, and David B. Hempstead, secretary of the Central Pacific Railway Company, personally known to me to be the said officers of the said corporation respectively and the individuals described and who executed the within instrument as such officers of said company, and they each severally and personally then and there acknowledged to me that they executed the said instrument as the free act and deed of the said Central Pacific Railway Company and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal as such notary public at my office in said county of Salt Lake and State of Utah, the day and year last above written.

[SEAL.]

LULA GEOGHEGAN,
 Notary Public

459 My commission expires Sept. 17th, 1901.
 [10-cent int. rev. stamp canceled.]

STATE OF UTAH,

County of Salt Lake, ss:

On this 1st day of August, A. D. 1899, personally appeared before me Thomas Marshall and David B. Hempstead, who, being by me respectively, duly sworn, each for himself says that the said Thomas Marshall is the president of the Central Pacific Railway Company and the said David B. Hempstead is the secretary of said company, and that one of the corporations named in the foregoing instrument, and that the said instrument was signed in behalf of said corporation by said president and secretary, respectively, under and in pursuance of a resolution of its board of directors; and the said Marshall and David B. Hempstead, respectively, acknowledged to me that said corporation executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal in said county of Salt Lake, State of Utah, on this 1st day of August, A. D. 1899.

[SEAL.]

LULA GEOGHEGAN,
 Notary Public

460 My commission expires Sept. 17th, 1901.
 [10-cent int. rev. stamp canceled.]

STATE OF UTAH,

County of Salt Lake, ss:

On this 1st day of August, A. D. 1899, before me, Lula Geoghegan, a notary public in and for the county of Salt Lake, State of Utah, duly commissioned and qualified, personally appeared Thomas Marshall, known to me to be the president, and David B. Hempstead,

known to me to be the secretary, of the Central Pacific Railway Company, the corporation described in and which executed the within-nnexed instrument, and acknowledged to me that said corporation executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal at my office in the city and county of Salt Lake, State of Utah, the day and year in this certificate first above written.

[SEAL.]

LULA GEOGHEGAN,
Notary Public.

61 My commission expires Sept. 17th, 1901.

[10-cent int. rev. stamp canceled.]

STATE OF NEW YORK,

County of New York, ss:

On this eighth day of August, A. D. 1899, personally appeared before me, a notary public in and for the county of New York, in the State of New York, and a commissioner of deeds for the State of New York, duly appointed under the laws of the State of Utah to take acknowledgments of deeds, James S. Clark and Henry L. Thornell, who, being by me respectively duly sworn, each for himself says that the said James S. Clark is the vice president of the United States Trust Company of New York and the said Henry L. Thornell is the secretary of said company, one of the corporations named in the foregoing instrument, and that said instrument was signed in behalf of said corporation by said vice president and secretary, respectively, under and in pursuance of a resolution of its board of directors; and the said James S. Clark and Henry L. Thornell, respectively, acknowledged to me that said corporation executed the same.

2 In witness whereof I have hereunto set my hand and affixed my official seals in said county of New York, State of New York, on this eighth day of August, 1899.

[L. S.]

GEO. H. COREY,
Notary Public.

My commission as notary public expires March 30, 1901.

[L. S.]

GEO. H. COREY,
Commissioner of Deeds of the State of Utah

in and for the State of New York.

My commission as commissioner of deeds expires January 5, 1902.
[10-cent int. rev. stamp canceled.]

STATE OF NEW YORK,

County of New York, ss:

I, William Sohmer, clerk of the county of New York, and also clerk of the supreme court for the said county, the same being a

court of record, do hereby certify that Geo. H. Corey, whose is subscribed to the certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was at the time taking such proof or acknowledgment a notary public in and for the county of New York, dwelling in the said county, commissioned and sworn and duly authorized to take the same. And, further, that I am well acquainted with the handwriting of such notary, and verily believe that the signature to the said certificate of proof or acknowledgment is genuine.

In testimony whereof I have hereunto set my hand and affixed my seal of the said court and county the 9th day of August, 1899.

[L. S.]

WM. SOHMER, Clerk

[10-cent int. rev. stamp cancelled.]

STATE OF NEW YORK,

County of New York, ss:

On this eighth day of August, A. D. 1899, before me, George H. Corey, a notary public in and for the county of New York, State of New York, duly appointed and qualified, and a commissioner of deeds for the State of New York, duly appointed under the laws of the State of Nevada to take acknowledgments of deeds, personally appeared the within-named James S. Clark, vice president of the United States Trust Company of New York, and Henry L. Thompson, secretary of the United States Trust Company of New York, both personally known to me to be the said officers of the said corporation, respectively, and the individuals described in the within instrument as such officers of said company, who executed the within instrument as such officers of said company, and they each severally and personally then and there acknowledged to me that they executed the said instrument as the free act and deed of the said United States Trust Company of New York, and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seals as such notary public and commissioner of deeds at my office in said county of New York and State of New York the day and year last above written.

[L. S.]

GEO. H. COREY,
Notary Public

My commission as notary public expires March 30, 1901.

[L. S.]

GEO. H. COREY,

*Commissioner of Deeds of the State of Nevada
in and for the State of New York*

My commission as commissioner of deeds expires January 23, 1901.

[10-cent int. rev. stamp cancelled.]

65 STATE OF NEW YORK,
County of New York, ss:

I, William Sohmer, clerk of the county of New York, and also clerk of the supreme court for the said county, the same being a court of record, do hereby certify that Geo. H. Corey, whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument and thereon written, was, at the time of making such proof or acknowledgment, a notary public in and for the county of New York, dwelling in the said county, commissioned and sworn, and duly authorized to take the same. And, further, that I am well acquainted with the handwriting of such notary, and verily believe that the signature to the said certificate of proof or acknowledgment is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county the 9th day of August, 1899.

[L. s.]

WM. SOHMER, *Clerk.*

[10-cent int. rev. stamp cancelled.]

66 STATE OF NEW YORK,
County of New York, ss:

On this eighth day of August, A. D. 1899, before me, GEORGE H. COREY, a notary public in and for the county of New York, State of New York, duly commissioned and qualified, and a commissioner of deeds for the State of New York duly appointed under the laws of the State of California to take acknowledgments of deeds, personally appeared James S. Clark, known to me to be the vice president, and Henry L. Thornell, known to me to be the secretary, of the United States Trust Company of New York, the corporation described in and which executed the within-annexed instrument, and acknowledged to me that said corporation executed the same.

In witness whereof I have hereunto set my hand and affixed my official seals at my office in the city and county of New York, State of New York, the day and year in this certificate first above written.

[L. s.]

GEO. H. COREY,
Notary Public.

My commission as notary public expires March 30, 1901.

67 [L. s.]
GEO. H. COREY,
*Commissioner of deeds of the State of California
in and for the State of New York.*

My commission as commissioner of deeds expires October 28, 1899.

[10-cent int. rev. stamp cancelled.]

STATE OF NEW YORK, *County of New York*, ss:

I, William Sohmer, clerk of the county of New York, and also clerk of the supreme court for the said county, the same being a court of record, do hereby certify that Geo. H. Corey, whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument and thereon written, was, at the time of taking such proof or acknowledgment, a notary public in and for the county of New York, dwelling in the said county, commissioned and sworn, and duly authorized to take the same. And, further, that I am well acquainted with the handwriting of such notary, and verily believe that the signature to the said certificate of proof or acknowledgment is genuine.

468 In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county the 9th day of August, 1899.

[L. s.]

WM. SOHMER, *Clerk*.

[10-cent int. rev. stamp cancelled.]

469 DEFENDANTS' EXHIBIT (MARSHALL) No. 29, APRIL 15, 1915.

Central Pacific Railway Company, Southern Pacific Company, and United States Trust Company of New York, as Trustee.

Indenture dated March 1, 1911.

Four per cent thirty-five year European loan of 1911 unconditionally guaranteed by Southern Pacific Company.

Total issue limited to French francs 250,000,000 or £9,875,000, payable March 1, 1946.

Central Pacific Railway Company four per cent thirty-five year European loan of 1911, unconditionally guaranteed by Southern Pacific Company.

Indenture.

470 This indenture, made at the city of New York, in the State of New York, this first day of March, A. D. one thousand nine hundred and eleven, by and between the Central Pacific Railway Company, a corporation created and organized under and by virtue of the laws of the State of Utah (hereinafter called the "Railway Company"), party of the first part, and the Southern Pacific Company, a corporation created and organized under and by virtue of the laws of the State of Kentucky (hereinafter called the "Company"), party of the second part, which corporations are hereinafter called collectively the "Pacific Companies", and the United States Trust Company of New York, a corporation organized and existing under

and by virtue of the laws of the State of New York (hereinafter called the "Trustee"), party of the third part, witnesseth:

Whereas the Railway Company is the owner of a continuous railroad extending from a connection with the Union Pacific Railroad Company near Ogden, in the State of Utah, to San Francisco and other cities and towns in the State of California, and holding franchises under acts of the Congress of the United States, and is, by its articles of association and by the laws of the State of Utah, empowered to borrow money, and from time to time to issue bonds for the same, payable at such times and places and drawing interest at such rate as the directors of the Railway Company may deem proper, and to execute trust deeds or indentures to secure the same; and

Whereas the Company is empowered by its charter to contract for and acquire by purchase or otherwise bonds, stocks, obligations, and securities of any corporation, and to enter into contracts with any corporation in respect of its bonds, stocks, obligations, and securities, and is also empowered by its charter to buy, hold, sell, and deal in all kinds of bonds and securities, and to borrow and loan money, issue its own bonds or other evidences of indebtedness, and sell and negotiate and pledge the same to such amounts and on such terms and in such manner as may from time to time be determined by its board of directors, and to mortgage or pledge all or any of its property, assets, and franchises to secure its obligations, and is the owner of all of the capital stock of the Railway Company, except directors' qualifying shares, and is also the lessee of the railroad of the Railway Company and as such is in possession thereof and operating the same; and

Whereas the board of directors of the Railway Company, at meetings lawfully held, duly adopted certain resolutions, and hereby, among other things, determined to borrow moneys for the construction or purchase of property, for double tracking and other improvement, betterment and extension of its railroads, and for other corporate purposes, and resolved to make, create, and sell an issue of its bonds to an aggregate principal amount limited to two hundred and fifty million French francs (fcs. 250,000,000) or nine million eight hundred and seventy-five thousand pounds sterling (£9,875,000) face value of its four per cent thirty-five-year European bond of 1911, to be dated March 1, 1911, to be payable March 1, 1946, and to bear interest from March 1, 1911, at the rate of four per cent (4%) per annum, payable semiannually on the first day of March and of September of every year; said bonds to be issued and authenticated under and in conformity with the terms and provisions of an indenture of even date therewith; and also duly determined and resolved to sell said bonds to the Company; and

Whereas the board of directors of the Company, at meetings lawfully held, duly adopted certain resolutions, and thereby, among other things, determined that it was for the advantage, benefit and interest of the Company, as the stockholder and lessee of the railroads of the Railway Company that the Railway Company should succeed in procuring the said moneys desired by it for the purposes aforesaid, and also that it was for the advantage, benefit and interest of the Company to purchase the said bonds of the Railway Company and sell the same, and in order to effect such sale conditionally to guarantee the payment of the principal and interest of said bonds and the due and punctual performance by the Railway Company of its covenants in said bonds and indenture contained, and to execute an indenture to secure the same; and whereby it was also resolved to make such purchase and guaranty and to execute said indenture, and a contract for such purchase has been made; and

Whereas this indenture was duly submitted to and approved at its execution directed by said board of directors of the Railway Company at meetings duly and lawfully held and the resolutions approving the same and directing its execution and the issue of said bonds have been duly assented to by the holders of all the shares of preferred and of common stock of the Railway Company; and this indenture was duly submitted to and approved, and its execution and the guaranty of said bonds directed by said board of directors

474 of the Company at such meetings; and

Whereas the forms in English of the said temporary interim bonds, of the definite engraved bonds and coupons, and the certificate of the Trustee to be endorsed on all such bonds submitted to and approved by the respective boards of directors of the Pacific Companies, are substantially as follows (subject to such changes, if any, in the definite engraved bonds and coupons as may be made pursuant to section 4 of article one of this indenture), to wit:

(Form of temporary or interim bond.)

No. ———.

Fcs. 2,500,000

£98,750.

United States of America.

Central Pacific Railway Company four per cent thirty-five-year European loan of 1911, unconditionally guaranteed by Southern Pacific Company. Total issue limited to French francs, 250,000,000 or £9,875,000.

Temporary or interim bond.

The Central Pacific Railway Company, for value received, promises to pay to the bearer, upon the surrender hereof, on the first

75 day of March, 1946, the sum of two million five hundred thousand French francs, in the city of Paris, France, at the central banking houses of the Banque de Paris et des Pays-Bas or of the Societe Generale pour favoriser le Developpement du Commerce et de l'Industrie en France or elsewhere in France at the offices of the branches and agencies of said banks or of correspondents which they may designate, or, at the option of the holder, in Belgium or in Switzerland at the offices of the branches and agencies of either of the aforesaid banks or of correspondents which they may designate, at the then current rate of exchange for sight francs on Paris or, at the option of the holder, in London or elsewhere in England at the banking house of Baring Brothers & Co. (Ltd.), or at the offices of the branches and agencies of any of the aforesaid banks or of correspondents which they may designate, at the fixed rate of exchange of ninety-eight thousand seven hundred and fifty pounds, sterling money of Great Britain, for two million five hundred thousand French francs; and to pay interest thereon from the first day of March, 1911, at the rate of four per centum per annum, payable upon presentation of this bond for notation of such payment hereon) semiannually on the first day of March and of September 76 in each year, in French francs at said offices in Paris and elsewhere in France, or, at the option of the holder, at said offices in Belgium or in Switzerland at the then current rate of exchange for sight francs on Paris, or at said offices in England at the aforesaid fixed rate of exchange. Said principal and interest are payable without deduction for any tax or taxes which the said Railway Company may be required to pay or retain therefrom under any present or future law of the United States of America, or of any State, county, or municipality therein, and without deduction for any French duties or taxes in respect of the principal and interest of this bond, it being understood that the aggregate amount of such French duties and taxes chargeable to the said Railway Company shall never exceed the aggregate amount of such duties and taxes in respect of the principal and interest of this bond as result from the present application of the laws of the French Republic in force on March 1, 1911; and any French duties or taxes in addition to such last mentioned aggregate amount shall be deducted from the principal or the interest when payable.

This bond is one of 100 temporary bonds, without coupons, of the denomination of 2,500,000 French francs each, numbered 1 77 to 100, both inclusive, and is issued in lieu of an equal principal amount of a series of engraved coupon bonds of the denomination of 500 French francs each, such bonds (both temporary and engraved) being all of like date and effect except as to amount, and without priority, preference, or distinction whatsoever of one

over another, for the aggregate principal sum of two hundred and fifty million French francs, or nine million eight hundred and eighty-five thousand pounds sterling, and all issued and to be issued under an indenture dated the first day of March, 1911, between said Railway Company and Southern Pacific Company and United States Trust Company of New York, as Trustee, to which indenture reference is hereby made.

This bond will be exchangeable for an equal principal amount of said bonds in the denomination aforesaid, when engraved, with coupons for all unmatured interest payable thereon.

This bond is subject to redemption at the option of the Railway Company or its successors at par and accrued interest on March 1, 1921, or on any semiannual interest date thereafter, upon six months' notice as provided in said indenture, or on any semiannual interest date under the special conditions and upon the notice there-
478 set forth; under the proviso that in either case redemption must be of the total amount of the issue then outstanding.

The Railway Company, ten days before this bond becomes due, either according to the tenor thereof or by redemption as above provided, and ten days before any interest installment thereon becomes due, will deposit with the two French banks herein named, or either of them, for distribution and payment to the respective holders of such bonds, a sum in French francs at least sufficient to pay as at said the principal and interest then to become due, and such deposit shall, when and as such bonds and interest installments respectively become due, be deemed payment thereof; all as provided in said indenture.

If this bond be not presented for payment within thirty years, or any matured interest installment thereon be not demanded within ten years, after this bond or such interest installment, as the case may be, becomes due and payable, the same shall be barred and outlawed for the benefit of the Railway Company and Southern Pacific Company.

All questions concerning the terms, provisions, and effect of said bonds and coupons and the rights of the holders thereof shall
479 be exclusively construed and determined according to law in the United States and be adjudicated by the proper judicial tribunals therein.

This bond shall be negotiable and pass by delivery.

This bond shall not become obligatory for any purpose until it shall have been authenticated by the certificate hereon indorsed by the Trustee under said indenture.

In witness whereof the Central Pacific Railway Company has caused its corporate name and the signature of its president or one of its vice presidents to be hereunto subscribed and its corporate seal

be hereunto affixed, duly attested by its secretary or by one of its assistant secretaries, at the city of New York, the first day of March, 1911.

CENTRAL PACIFIC RAILWAY COMPANY.

By ———, *Vice President.*

Attest:

———, *Assistant Secretary.*

(Form of definite engraved bond.)

United States of America.

Fcs. 500.

£19.15.

Central Pacific Railway Company four per cent thirty-five year European loan of 1911, unconditionally guaranteed by Southern Pacific Company. Total issue limited to French francs 250,000,000 or £9,875,000.

The Central Pacific Railway Company, for value received, promises to pay to the bearer, upon the surrender hereof, on the first day of March, 1946, the sum of 500 French francs, in the city of Paris, France, at the central banking houses of the Banque de Paris et des Pays-Bas or of the Societe Generale pour favoriser le Developpement du Commerce et de l'Industrie en France or elsewhere in France at the offices of the branches and agencies of said banks or of correspondents which they may designate, or, at the option of the holder, in Belgium or in Switzerland at the offices of the branches and agencies of either of the aforesaid banks or of correspondents which they may designate, at the then current rate of exchange for sight francs on Paris or, at the option of the holder, in London or elsewhere in England, at the banking house of Baring Brothers & Co. (Ltd.), or at the offices of the branches and agencies of any of the aforesaid banks or of correspondents which they may designate, at the fixed rate of exchange of nineteen pounds, fifteen shillings, sterling money of Great Britain, for five hundred French francs; and to pay interest thereon from the first day of March, 1911, at the rate of four per centum per annum, payable semiannually on the first day of March and of September in each year, in French francs at said offices in Paris and elsewhere in France, or, at the option of the holder, at said offices in Belgium or in Switzerland at the then current rate of exchange for sight francs in Paris, or at said offices in England at the aforesaid fixed rate of exchange, on presentation and surrender of the respective coupons hereunto attached as the same become due. Said principal and interest are payable without deduction for any tax or taxes which the

said Railway Company may be required to pay or retain thereunder any present or future law of the United States of America of any State, county, or municipality therein, and without deduction for any French duties or taxes in respect of the principal interest of this bond, it being understood that the aggregate amount of such French duties and taxes chargeable to said Railway Company shall never exceed the aggregate amount of such duties and taxes in respect of the principal and interest of this bond as result from the present application of the laws of the French Republic in force on March 1, 1911; and any French duties or taxes in addition to such last-mentioned aggregate amount shall be deducted from the principal or the interest when payable.

This bond is one of 500,000 bonds, of the denomination of French francs each, numbered 1 to 500,000, both inclusive, and of like date, tenor, and effect, and without priority, preference, or distinction whatsoever of one over another, for the aggregate principal sum of two hundred and fifty million French francs, or nine million eight hundred and seventy-five thousand pounds sterling, and to be issued and to be issued under an indenture dated the first day of March, 1911, between the said Railway Company and Southern Pacific Company and United States Trust Company of New York, Trustee, to which indenture reference is hereby made.

This bond is subject to redemption at the option of the Railway Company, or its successors, at par and accrued interest on March 1, 1921, or on any semiannual interest date thereafter upon six months' notice, as provided in said indenture, or on any semiannual interest date under the special conditions and the notice therein set forth, under the proviso that in either case redemption must be of the total amount of the issue then outstanding.

The Railway Company, ten days before this bond becomes due, either according to the tenor thereof or by redemption as above provided, and ten days before any coupon thereunto appertaining comes due, will deposit with the two French banks herein named, either of them, for distribution and payment to the respective holders of all such bonds and coupons, a sum in French francs at least sufficient to pay as aforesaid the principal and interest then to come due, and such deposit shall, when and as such bonds and coupons respectively become due, be deemed payment thereof; all as provided in said indenture.

If this bond be not presented for payment within thirty years after any coupon hereunto attached be not presented for payment within ten years, after this bond or such coupon, as the case may be, becomes due and payable, the same shall be barred and outlawed for the benefit of the Railway Company and Southern Pacific Company.

All questions concerning the terms, provisions, and effect of said bonds and coupons and the rights of the holders thereof shall be exclusively construed and determined according to law in the United States and be adjudicated by the proper judicial tribunals therein. While this bond and the interest coupons are in both the English and French languages, the English form shall prevail in construction.

This bond and each coupon hereunto appertaining shall be negotiable and pass by delivery.

This bond shall not become obligatory for any purpose until it shall have been authenticated by the certificate hereon indorsed of the trustee under said indenture.

In witness whereof the Central Pacific Railway Company has caused its corporate name and the engraved facsimile signature of its president or one of its vice presidents to be hereunto subscribed and its corporate seal to be hereunto affixed, duly attested by its secretary or one of its assistant secretaries, and coupons for said interest authenticated by the engraved facsimile signature of its treasurer, to be hereunto attached, at the city of New York, the first day of March, 1911.

CENTRAL PACIFIC RAILWAY COMPANY,
By -----,
President.

Attest:

-----,
Assistant Secretary.

(Form of coupon.)

Fcs. 10.

£0:7:10-3/4.

Central Pacific Railway Company 4% 35-year European loan of 1911 unconditionally guaranteed by Southern Pacific Company.

The Central Pacific Railway Company will pay to bearer on the first day of -----, 19--, the sum of ten French francs at the offices, branches, or agencies of the Banque de Paris et des Pays-Bas or of the Societe Generale pour favoriser le Developpement du Commerce et de l'Industrie en France (or correspondents which they may designate) in France, Belgium, Switzerland, or England, or of Baring Brothers & Co. (Ltd.) in England—payable in Belgium and Switzerland at the then current rate of exchange for sight francs on Paris and in England at the fixed rate of exchange of 7 shillings 10-3/4 pence sterling for 10 fcs., being six months' interest then due on its bond No. ----, dated March 1, 1911,

without deduction for present or future taxes in the United States and French taxes in respect to this coupon to the aggregate amount resulting from laws in force March 1, 1911, all as provided in the bond.

Treasurer

(Form of certificate of Trustee.)

This bond is one of the bonds described in the within-mentioned indenture.

UNITED STATES TRUST COMPANY OF NEW YORK,
Trustee

By _____.

And whereas each of said bonds, both temporary and definitive, to have upon it the following endorsement by the company, duly executed by it, viz:

(Form of guaranty.)

The Southern Pacific Company, for value received, hereby unconditionally guarantees to the bearer of the within bond and 487 the Trustee therein named the due and punctual payment of the principal and interest thereon as the same mature, according to the tenor of said bond and the indenture therein referred to and itself agrees punctually to pay the said principal and interest as therein provided if default in the payment thereof be made by the Central Pacific Railway Company; and also guarantees to the bearer hereof and to said Trustee that said Railway Company will and punctually perform all the terms, covenants, and conditions on its part to be performed under said indenture; and that in case said Railway Company shall default in performing or carrying out any of the terms, covenants, and conditions of said indenture and the bond said Southern Pacific Company itself will duly and punctually perform and comply with the same without notice or demand.

In witness whereof the Southern Pacific Company has caused its corporate name and the signature or the engraved facsimile signature of its president or one of its vice presidents to be hereunto subscribed and its corporate seal to be hereunto affixed, duly attested by its secretary or one of its assistant secretaries, at the city of

San Francisco, California, this first day of March, 1911.

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SOUTHERN PACIFIC COMPANY

By _____,

President

Attest:

Secretary.

And whereas this indenture was submitted to and approved by respective boards of directors of the Pacific Companies; and all things necessary to make such bonds when executed by the Railway Company, guaranteed by the Company and certified by the Trustee, valid, binding and legal obligations of the Railway Company to the Company, and to constitute these presents a valid indenture to provide for the certification and the enforcement of the payment of said bonds, have been done and performed and have happened, and the execution and issue of said bonds and guaranty and this indenture have in all respects been duly authorized; now, therefore, this indenture witnesseth:

That in order to promote the equal and proportionate benefit of all present and future takers and holders of the bonds and coupons issued and to be issued and outstanding under this indenture and the performance of all the covenants and conditions herein and therein contained, and in consideration of the terms and of the purchase and acceptance of such bonds by the holders thereof, severally and respectively, and of the sum of one dollar to each of the Pacific Companies duly paid by the Trustee at the execution and delivery of these presents, the receipt whereof is hereby acknowledged, the Pacific Companies severally have covenanted and declared, and by these presents severally do covenant and declare that each and every of the said bonds is to be issued, guaranteed, authenticated, negotiated, sold and held upon and subject to the following trusts, uses, conditions, covenants, and agreements, which are accepted and assented to by the taker and holder of each and every of said bonds, so that each and every such holder shall have equal and proportionate rights and claims against the Pacific Companies, without preference, priority or distinction as to one or the other of said bonds by reason of priority in the issue, sale or negotiation thereof, or otherwise; and so that each and every bond issued as aforesaid shall have equal and proportionate rights, as though all had been duly issued, sold and negotiated simultaneously with the execution and delivery of this indenture; and each and every of said bonds shall be authenticated by the Trustee and shall be enforced by the Trustee, except as otherwise expressly declared in said bonds or in this indenture.

ARTICLE ONE.

Authentication and issue of bonds.

SECTION 1. From time to time the bonds issued hereunder shall be executed by the Railway Company and shall be guaranteed by the Company, and by the Railway Company shall be delivered to the

Trustee for authentication; and thereupon, as provided in article, and not otherwise, the Trustee shall authenticate and deliver the same. Said temporary or interim bonds may be printed or lithographed and shall be numbered from 1 to 100, both inclusive, and said engraved bonds shall be numbered from 1 to 500,000, inclusive.

The amount of bonds issued hereunder, which may be executed by the Railway Company and which may be authenticated by the Trustee, is limited so that never at any time shall there be outstanding bonds hereunder for an aggregate principal sum exceeding two hundred and fifty million French francs (Fcs. 250,000,000) or nine million eight hundred and seventy-five thousand pounds sterling (£9,875,000).

Before authenticating or delivering any coupon issued hereunder the Trustee shall detach and shall cancel the coupons thereof then matured.

Only such of said bonds as shall bear thereon the said certificate of the Trustee shall be issued under this indenture. No such bond nor any coupon thereunto appertaining, shall be valid for any purpose until such certificate shall have been duly indorsed on such bond. Every such certificate of the Trustee upon any bond executed by the Railway Company and guaranteed by the Company shall be conclusive evidence that the bond so authenticated was duly issued under this indenture.

SEC. 2. The entire issue of said bonds, to wit, two hundred and fifty million French francs, or nine million eight hundred and seventy-five thousand pounds sterling, authorized to be issued under this indenture, both the said temporary or interim bonds and the definitive engraved bonds (except engraved bonds to the amount of temporary bonds turned in to be canceled under section 7 of article four), shall be duly executed by the Railway Company and the guaranty of the Company shall be duly executed and indorsed thereon.

and so executed and guaranteed shall be delivered to the Trustee for authentication and shall be so authenticated by the Trustee

and delivered to the Railway Company, or upon the order of the Trustee, without further order, authority, or direction; and full authority to the Trustee for such authentication and delivery of bonds to the amount of two hundred and fifty million French francs, or nine million eight hundred and seventy-five thousand pounds sterling, face value, of which the amount of temporary bonds is hereby given; but engraved bonds shall be authenticated and delivered by the Trustee only against the surrender to the Trustee of the temporary bonds for cancellation of a like amount of temporary bonds.

SEC. 3. In case any of the officers who shall have signed or whose facsimile signature shall be affixed to, any of said bonds, or the guaranty indorsed thereon, or whose facsimile signature

affixed to the coupons appertaining to the engraved bonds, shall
be to be such officer or officers of the Pacific Companies, respec-
tively, before the bonds so signed and sealed shall have been ac-
tually authenticated by the Trustee, or delivered or sold or otherwise
issued, such bonds may, nevertheless, be adopted by the Pacific Com-
panies, and upon the written request of the Railway Company shall
be authenticated and delivered, subject to the provisions of section 2
of this article; and may be sold or otherwise issued as though
none of the persons who signed or sealed, or whose facsimile
signature is affixed to such bonds or the guaranty indorsed
thereon, or whose facsimile signature is affixed to the coupons apper-
taining to the engraved bonds, had ceased to be such officer of the
Railway Company, or, as the case may be, of the Company.

SEC. 4. The Railway Company agrees duly to prepare and execute
engraved bonds and coupons and the Company agrees to guarantee
the same in the form hereinbefore set forth, in the English and
French languages, and to deliver the same in exchange for such tem-
porary or interim bonds (except engraved bonds to the amount of
temporary bonds turned in to be canceled under section 7 of article
four) with such changes, if any, as to the places and manner of pay-
ment of the principal and interest of such bonds as shall be approved
by Messrs. Sullivan & Cromwell, of New York. Such definitive en-
graved bonds, together with the coupons for interest thereto attached,
the guaranty indorsed thereon, and the certificate of the Trustee,
shall be in both the English and French languages, but it is agreed
that the English form shall prevail in construction.

SEC. 5. The Pacific Companies severally agree that if, at any
time, because of their mutilation or other material condition,
any of such bonds and coupons shall not be a good delivery
upon any exchange or bourse where the same may be listed, they
will, upon surrender of the same and upon payment of the actual
expense, execute and guarantee hereunder, respectively (and there-
upon the Trustee shall certify and deliver), in exchange for and
upon cancellation of such bonds and coupons a new bond or bonds
and coupons of like aggregate amount, in like form and bearing a
like number or numbers; and that if any such bonds and coupons
be lost or destroyed, then, upon request of the owner thereof, and
upon proof of ownership and of such loss or destruction and also
upon indemnity, all to the satisfaction of the Pacific Companies and
the Trustee, and also upon the payment of the actual expense, they
will execute and guarantee hereunder, respectively (and thereupon
the Trustee shall certify and deliver), in place thereof, a new bond or
bonds and coupons of like aggregate amount, in like form and bear-
ing a like number or numbers; and if any coupon appertaining to

any bond issued hereunder be lost or destroyed, then, upon request of the owner thereof and upon proof of ownership and of such loss or destruction, and also upon indemnity, all to the satisfaction of the Pacific Companies and of the Trustee, the Pacific Companies, or one of them, will thereupon pay the same, if not due, or, if not due, will pay the same upon the maturity thereof.

ARTICLE TWO.

Particular covenants by the Railway Company.

The Railway Company covenants and agrees that it will duly and punctually pay the principal and interest of every bond issued under this indenture at the dates and the places and in the manner mentioned in such bonds or in the coupons thereto belonging, according to the true intent and meaning thereof, without deduction for any tax or taxes which the Railway Company may be required to pay or retain therefrom under any present or future law of the United States of America, or of any State, county, or municipality thereof, and without deduction for any French duties or taxes in respect of the principal and interest of the bonds, it being understood that the aggregate amount of such French duties and taxes chargeable to the Railway Company shall never exceed the aggregate amount of such duties and taxes in respect of the principal and interest of the bonds as result from the present application of the laws of the French

Republic in force on March 1, 1911; and any French duties and taxes in addition to such last-mentioned aggregate amount shall be deducted from the principal or the interest when payable. The interest on temporary bonds shall be payable only upon presentation thereof for notation of such payment thereon, and the interest on the engraved bonds shall be payable only upon presentation and surrender of the several coupons for such interest as they respectively mature, and when paid such coupons shall forthwith be canceled. From time to time thereafter the Railway Company shall deliver such canceled coupons to the Trustee for destruction and the Trustee shall thereupon cremate the same and furnish the Railway Company with a certificate specifying the coupons so cremated.

The deposit by the Railway Company with the French banks, either of them, ten days prior to any interest date, of a sum in French francs sufficient to pay as aforesaid the interest becoming due on such date, together with such additional sum as may be required to pay the expenses and compensation of the French banks in connection with the payment of such interest to the holders of coupons thereon, or, as the case may be, to the holders of temporary bonds, shall be made between each of the Pacific Companies and the Trustee, on

97 one hand, and the holders of said bonds and coupons, on the other hand, be deemed, at such interest date, a payment, satisfaction, and discharge of the said interest.

ARTICLE THREE.

Particular covenants by the Company.

In consideration of the benefits and advantages to be derived by the Company, as the owner of all the capital stock of the Railway Company, except directors' qualifying shares, and as the lessee of the railroads of the Railway Company, from the procuring by the Railway Company of the funds needed by it for its corporate purposes and the betterment, improvement, and extension of its lines with and out of the proceeds of the bonds to be issued under and secured by this indenture, and in view of the purchase by the Company of the bonds of the Railway Company issued hereunder and as an inducement to the purchase by others from it of the bonds so purchased by it, and in consideration also of the sum of one dollar to it paid by the party of the third part, the receipt whereof is hereby acknowledged, and of other good and valuable considerations to it moving, the Company has covenanted and agreed, and by these presents does covenant and agree, to and with each and every of the bearers of the bonds to be issued under and secured by
98 this indenture, and to and with the Trustee for the benefit of such bearers, from time to time, of such bonds, as follows:

SEC. 1. The Company unconditionally guarantees to the bearer of each of the bonds issued hereunder and to the Trustee the due and punctual payment of the principal and interest thereon as the same mature according to the tenor of said bonds and this indenture, and itself agrees punctually to pay the said principal and interest as herein and therein provided if default in the payment thereof be made by the Railway Company; and also guarantees to the bearer of each of said bonds and to the Trustee that the Railway Company will duly and punctually perform all the terms, covenants, and conditions on its part to be performed under this indenture; and that in case the Railway Company shall make default in performing or carrying out any of the terms, covenants, and conditions of this indenture and of said bonds, the Company itself will duly and punctually perform and comply with the same without notice or demand.

SEC. 2. The Company hereby waives the presentation to the Railway Company for payment of the bonds issued hereunder and the coupons attached thereto and waives demand for payment
99 upon the Railway Company and all protest and notice of dishonor; and no action or inaction of the holders of said bonds, or of the Trustee, with respect to the Railway Company or its prop-

erty, shall release the Company or affect or impair any of the right of the bondholders or the Trustee hereunder against the Company.

SEC. 3. The Company covenants and agrees that so long as any of the said bonds are outstanding and unpaid the Southern Pacific Company will not sell or hereafter pledge any of the shares of the capital stock of the Central Pacific Railway Company (except as provided by the Company's Central Pacific stock collateral mortgage), Southern Pacific Railroad Company, the Galveston, Harrisburg, and San Antonio Railway Company, or Southern Pacific Terminal Company (known as the Galveston Terminal); nor will it sell or suffer to be sold any of the shares of the capital stock of Houston and Texas Central Railroad Company, the Houston East and West Texas Railway Company, Houston and Shreveport Railroad Company, Texas and New Orleans Railroad Company, Louisiana Western Railroad Company, Morgan's Louisiana and Texas Railroad and Steamship Company, South Pacific Coast Railway Company, Oregon and California Railroad Company, nor sell the property

known as the Bay Shore Line, in San Francisco (otherwise known as the San Francisco Terminal); and the Company

will not sell, or suffer to be sold, transferred, canceled, or surrendered, the leases of any of the railroad lines of said companies (except that the Company may subordinate any such lease to a mortgage to be made by such lessor not in violation of the provisions of this indenture); nor will the Company suffer the railroad lines of any of said companies to be sold or leased, nor will it or any of said companies enter into any merger or consolidation, except (in the case of any such sale, lease, merger, or consolidation) inter se or to or with a corporation all of whose stock other than directors' qualifying shares shall at the time be held hereunder or to or with the Company; nor except as aforesaid will it or they be dissolved or liquidated; and that, except as aforesaid, it and the said companies will severally maintain, renew, or extend their corporate existence; but the Southern Pacific Railroad Company may at any time sell and convey a portion of its lines of railroad extending from a point at or near Mojave, in Kern County, to Needles, on the Colorado River, in San Bernardino County, California, now in the possession of and operated by the Atchison, Topeka and Santa Fe Railway Company

as lessee for a term extending to July 1st, 1979, under and subject to the conditions of a contract and indenture of lease dated July 15th, 1898:

Provided, That any such acts or matters covenanted not to be done or to be done (as the case may be) may be done or not done (as the case may be) upon the approval in writing by the French banks filed with the Trustee after specific statement in writing by the Company to the French banks of the action proposed; and that

any case of the refusal of the French banks to assent to the action so proposed, or their failure to assent thereto within thirty days after presentation to them in writing of such proposal, the Railway Company shall have and is hereby expressly accorded the right and option (to be exercised within forty days from the date of such refusal or within forty days from the expiration of said thirty days in respect of the failure to assent, as the case may be) to declare the entire principal of said bonds then outstanding to be due and payable at the next ensuing interest date (whether before, on, or after March 1, 1921) not less than sixty days from the date of such declaration, and to redeem and pay all such bonds, with accrued interest, on such date, with the same force and effect and in the same manner as is provided in respect of its right of redemption on or after March 1, 1921, in article eight of this indenture, except that the first publication of notice in respect of the redemption in this section 3 provided for shall be not less than sixty days, instead of six months, preceding such redemption.

SEC. 4. The Pacific Companies severally agree that the Company, the Railway Company, the Southern Pacific Railroad Company, the Alveston, Harrisburg and San Antonio Railway Company, the Southern Pacific Terminal Company, and any corporation the stock of which shall be held on deposit hereunder, will severally fully and punctually make upon demand at or after maturity all payments to be by them respectively made in, by, or under any bond, mortgage, pledge, lease, or other fixed obligation or guaranty heretofore or hereafter respectively made by them; and that no decree of foreclosure or sequestration, or any order or orders, decree or judgment, appointing a receiver of them or their railroads shall be entered against any of said corporations, nor shall any of them voluntarily or otherwise go into insolvency or suffer itself to be declared insolvent or be voluntarily or otherwise dissolved, except as in section 3 of this article provided; and that if any final judgment or decree (other than as aforesaid) be entered against any of said corporations the same shall forthwith be paid or performed and satisfied and discharged of record or stayed upon appeal: *Provided, however,* That nothing contained in this section shall require the said companies to make any payment, or perform or satisfy and discharge any judgment, order, or decree, so long as they or either of them shall by appropriate legal proceedings or otherwise contest the same, and prevent, stay, or otherwise avoid enforcement thereof.

SEC. 5. No corporation the capital stock of which shall be at any time pledged under this indenture shall, while such stock shall be held hereunder and without the consent of the French banks, (1) decrease its capital stock or issue stock preferred to that held hereunder,

or (2) issue additional stock of the same or an inferior class to be held hereunder, unless in the case of such additional stock the pro rata share of the same to be delivered to the Trustee as additional collateral hereunder, or (3) create any mortgage upon any railroad now owned by it, or (4) create any new lease, except to the Company, or (5) sell any of its railroads to, or consolidate with, or with any other company, except a company all of whose stock is owned by the directors' qualifying shares shall be at the time deposited hereunder, or (6) suffer its franchises or corporate existence to be terminated, except by sale, merger, or consolidation as aforesaid, with the Company, except, however, (1) that the Southern Pacific Railroad Company may create an additional mortgage upon any real properties or any part thereof upon condition that the capital stock of said Southern Pacific Railroad Company then on deposit under this indenture shall previously be reappraised in the manner hereinafter provided for appraisements and reappraisements in cases of withdrawals and substitutions of collateral; and if it shall be determined upon such reappraisalment that said deposited stock is or will be of less value by reason of such mortgage or otherwise than the amount at which it then stands appraised under this indenture, then such deficiency in value shall be made entirely good and whole by the deposit of additional collateral (of a value and character like the collateral appraised and determined) to the amount of any such deficiency; and except (2) that any of said corporations may issue any bonds authorized to be issued under any mortgage or mortgages now existing, and may extend any bonds issued or to be issued under this indenture, and may create a mortgage or mortgages to secure bonds to refund, or in lieu of bonds issued or issuable under this indenture, such existing mortgage or mortgages to a maximum amount not to exceed the bonds to be refunded or replaced; and except (3) that the Houston and Texas Central Railroad Company, which has already taken action of its directors and stockholders, authorized an issue of bonds to be secured by mortgage upon its recently constructed line from the junction of its line at Nelleva to another junction with its main line at or near Mexia, may create a mortgage to secure an issue of such bonds to the amount which may have been authorized and approved by the Railroad Commission of Texas; and except (4) that the Galveston, Harrisburg and San Antonio Railway Company may create a mortgage upon that portion of its lines formerly owned by the San Antonio and Gulf Railroad Company and subsequently abandoned by construction from San Antonio to Cuero, upon the line formerly owned by the Gulf, Western Texas and Pacific Railroad Company extending from Cuero to Beeville and from Port Lavaca to Victoria, upon the lines formerly owned by the New York, Tex.

and Mexican Railway Company extending from Victoria to Rosenberg, with various branches, and upon the line formerly owned by the Galveston, Houston and Northern Railway Company extending from a junction with the Texas and New Orleans Railroad near Houston to Galveston, and upon the line formerly owned by the Gonzales Branch Railroad Company extending from Harwood to Gonzales: *Provided*, That in connection therewith the mortgage bonds of the Gulf, Western Texas and Pacific Railway Company, the New York, Texas and Mexican Railway Company, and the Galveston, Houston and Northern Railway Company now outstanding and held by the Southern Pacific Company, or by companies in which it is interested as a majority stockholder, shall be retired and canceled.

Nothing in this indenture contained shall be construed as preventing the Railway Company from mortgaging any property at any time owned by it.

SEC. 6. The Company hereby states and represents that it is the lessee of the railroads of the Railway Company, and is the owner of all of the shares of capital stock of the Railway Company, except directors' qualifying shares; and that as such stockholders and lessee it has duly assented, and does hereby duly assent, that the Railway Company make, issue, and sell its bonds herein described and execute and deliver this indenture.

ARTICLE FOUR.

Deposit by the Company of securities, and rights and remedies relating thereto.

SECTION 1. In consideration of the various matters and things recited in article three hereof, and in order to secure the payment of the principal and interest of all bonds at any time issued and outstanding under this indenture, according to the tenor, purport, and effect thereof, and to secure the due and punctual performance and observance of all the covenants, conditions, and provisions herein contained on the part of the Railway Company, and to secure the due and punctual performance of its own guaranties of the same and also of all of its own obligations under its own covenants or under any other provisions herein contained, and also to induce the purchase by others from itself of the said bonds to be issued hereunder, the Company, in consideration of the premises and of the sum of one dollar to it in hand paid by the Trustee, receipt whereof is hereby acknowledged, has deposited, assigned, transferred, and pledged, and by these presents does deposit, assign, transfer, and pledge, to the Trustee upon the trusts and subject to the terms and

conditions in this indenture expressed, the following-described securities, viz:

	Appraised value per share of \$100 per bond of \$1,000.	Appraised value
450 bonds Houston & Texas Central Railroad Company, first mortgage on Lampasas extension.....	\$1,000	\$450,000
19,995 shares Southern Pacific Terminal Company.....	100	1,999,500
100,000 shares Morgan's Louisiana & Texas Railroad & Steamship Company.....	50	5,000,000
119,910 shares 7% noncumulative preferred stock of the Oregon & California Railroad Company.....	60	7,194,600
99,983 shares Houston & Texas Central Railroad Company.....	50	4,999,150
1,000 second mortgage bonds, eastern division, the Gal- veston, Harrisburg & San Antonio Railway Company... ..	1,000	1,000,000
4,728 first mortgage bonds, eastern division, the Galveston, Harrisburg & San Antonio Railway Company.....	1,000	4,728,000
350,000 shares Southern Pacific Railroad Company.....	100	35,000,000
Total.....		60,371,250

It is understood and agreed that the present appraised value of the said deposited securities is as aforesaid.

The Company covenants and agrees that it is the lawful owner of said securities, and that the same have been lawfully created and issued, are fully paid, and are not subject to any prior pledge, charge, or equity.

SEC. 2. The Company shall have the right at any time (if there be then no default in respect of any provision in this indenture in the bonds issued hereunder contained or upon said bonds endorsed) to withdraw all (but not less than all) the stocks, bonds, and other securities of any one issue then on deposit under this indenture except the capital stock of the Southern Pacific Railroad Company, and to substitute other securities of not less appraised value than the last previously appraised value of the securities so to be withdrawn

and the Trustee shall from time to time on request of the Company (to be followed by appraisal as hereinafter provided), and upon receipt of the substituted securities deliver and transfer to it, or upon its order, such of the said stocks, bonds, or other securities then held hereunder (except said capital stock of the Southern Pacific Railroad Company) as shall be requested and indicated by the Company in writing, addressed to the Trustee and the French banks: *Provided, however,* That upon each and every withdrawal and substitution the securities offered in substitution in each instance shall be (1) of a character approved by the appraisers appointed hereunder and shall be (2) equal in appraised value at the time of the proposed substitution hereunder

the last previously appraised value of the securities to be withdrawn; and also that (3) the securities offered in substitution and those remaining on deposit (in each instance) shall be equal in value as appraised or reappraised at the time of such proposed substitution to one hundred and twenty per centum (120%) of the amount of bonds then outstanding hereunder: *And provided further*, (4) That the aggregate interest and dividends during each of the two years immediately prior to the proposed substitution actually paid upon the securities offered in substitution and upon the other securities remaining on deposit hereunder shall have been equal to at least 120% of the interest payable on the bonds then outstanding hereunder. No reappraisal of the securities remaining on deposit shall be made or required in connection with the withdrawal of securities (not exceeding \$5,000,000 in the aggregate of appraised value) requested prior to September 1, 1911.

SEC. 3. In all cases of substitutions, appraisements, and reappraisements, anywhere provided for under this indenture, the appraisements shall be made by two appraisers, one of whom shall be appointed by the Company and one by the French banks, or in case of the failure of either party to appoint an appraiser within ten days after request, then such appointment shall be promptly made by the Trustee. In case the two appraisers so appointed can not promptly agree upon the appraisement they shall appoint a third impartial appraiser, or failing such appointment within ten days after disagreement, then the Trustee shall promptly appoint the third appraiser; and the appraisement of the two appraisers, or of a majority of the three appraisers, as the case may be, shall be binding and conclusive upon all parties hereto. In case of any request made prior to September 1, 1911, for the withdrawal of securities of appraised value of not more than \$5,000,000, the appraisal and approval of the securities to be substituted may be made by joint certificate of the Company and the French banks instead of by appraisers appointed as aforesaid.

SEC. 4. Upon all appraisements, reappraisements, and substitutions under any provision of this indenture the French banks shall be accorded full opportunity to be heard (promptly after notice to them) in person or through agents and counsel before determination thereon; and the appraisers shall take into consideration all facts, circumstances, and conditions then existing in each case, including the probable results or effects of any proposed mortgage or other matter.

SEC. 5. All certificates for shares of stock and all registered bonds, now or hereafter deposited and pledged hereunder, shall be, at the time of the delivery thereof, duly endorsed in blank for transfer or

accompanied by irrevocable powers of attorney authorizing transfer of the same, and the Trustee shall from time to time transfer into its name as Trustee all such shares of stock and registered bonds and the Pacific Companies will pay to the Trustee the amount of any transfer tax necessary to be paid upon or in connection with any such transfers. Until and unless default shall be made by the Railway Company and the Company in the payment at maturity of the principal or the interest of any of the bonds issued hereunder, or until and unless default shall be made in the due and punctual observance or performance of any other of the terms, covenants, conditions, or requirements contained in said bonds and this indenture, and any such last-mentioned default shall have continued for the period of three months after notice thereof by the Trustee to the Company and the Railway Company, the Company (a) shall have the right to vote or to consent in respect of said stock and all of the shares of stock now or hereafter deposited or pledged hereunder, and from time to time the Trustee, upon the request of the Company, shall execute and deliver, or cause to be executed and delivered, to the Company suitable powers of attorney or proxies for so voting or consenting in respect of said stock; and the Company (b) shall be entitled to receive all interest paid in respect of any bonds now or hereafter deposited and pledged hereunder, and all dividends, except stock dividends, on all shares of stock now or hereafter deposited and pledged hereunder; and the Trustee shall deliver to the Company from time to time hereafter, upon request of the latter, suitable orders in favor of the Company or its nominee for the payment of interest upon any registered bonds and of said dividends upon shares of stock then deposited and pledged hereunder, and shall from time to time upon request of the Company (not more than thirty days prior to the date when such interest shall be payable) deliver to the Company or its nominee any and all coupons upon bonds then held hereunder; and the Trustee shall upon demand pay over to the Company any such interest and dividends which may be collected or be received by it. The Company covenants that such powers to vote or consent in respect of any stock now or hereafter pledged hereunder shall not be used in favor of, or to further the doing of, any act or thing in violation of any of the provisions of this indenture.

The Trustee also is fully empowered to do whatever may be necessary to maintain, renew, or extend the corporate existence of any company, stock of which may be held at the time hereunder, and may sell and transfer stock necessary to qualify directors.

SEC. 6. In case default shall be made in the payment upon demand of any installment of interest then due upon any bond issued

hereunder and then outstanding and such default shall have continued for the period of three months, or in case default shall be made in the payment of the principal of any of said bonds (whether upon maturity of said bonds or upon declaration as authorized by this indenture), then, and in every such case, the Trustee, in its discretion, upon the written request of the holders of twenty per cent in amount of the bonds then outstanding, and shall, upon the written request of the holders of twenty-five per cent in amount of the bonds then outstanding, proceed, upon thirty days' notice to the Company, and notice by publication at least once a week for four successive weeks in a daily newspaper of general circulation published in the city of New York, to sell at public sale in said city, for the best price that can be obtained therefor, the whole of the securities held by the Trustee at the time of such default, or as much thereof as may in the judgment of the Trustee be necessary to pay the principal of said bonds, if due, and all overdue coupons and arrears of interest thereon, the compensation, advances, liabilities, expenses of the Trustee and all expenses pertaining as well to the execution of the trust as to said sale and any other costs and charges incurred in consequence of such sale, as well as any taxes or charges upon said securities in connection with such sale, in such lots or parcels as the Trustee may deem most beneficial to the holders of such bonds; and the Trustee is authorized to adjourn from time to time, in its discretion, the sale of the whole or any part of said securities.

The action of the Trustee, whether with or without demand or request of the holders of any specified amount of said bonds then outstanding, in the exercise of any duties and powers anywhere in the indenture provided for, shall at all times be subject to the direction and control of a majority in amount of the bonds then issued and outstanding, whenever such majority shall give direction and exercise such control; provided that any action taken by the Trustee, in this indenture provided, before such majority shall give such action or exercise any such control shall be sufficient.

Upon any sale under this indenture, or under or pursuant to judicial proceedings, of the stocks, bonds, or other securities deposited hereunder, the purchaser or purchasers thereof shall be entitled in making payment of the purchase price to turn in and apply to the payment of the purchase price any of the said bonds issued hereunder and any matured and unpaid coupons, reckoning such bonds and coupons for that purpose at a sum equal to that which would be payable out of the net proceeds of said sale to the holder of said bonds and coupons so turned in as his or their proper share thereof, after allowing for the compensation, advances, liabilities and expenses of the Trustee and all expenses pertaining as

well to the execution of the trust as to said sale, and any other and charges incurred in consequence of such sale, as well as taxes or charges upon said securities. Said bonds, if so paid in shall be canceled; but if the amount which would be so payable said net proceeds upon an accounting, apportionment, or distribution to the holder of said bonds and coupons so turned in be less than the amount for which the Railway Company and the Company be liable on such bonds and coupons, then the receipt endorsed thereon by the Trustee or its agents for the amount so allowed or credited thereon shall be sufficient as to such payment.

The Trustee, after having received request as aforesaid, shall be entitled in its discretion, in lieu of proceeding to sell by its action the securities deposited hereunder, to bring suit before a court in the United States of competent jurisdiction to procure the sale by the court in, or in the course of, such suit. The provisions herein made with respect to the payment for any security sold by the Trustee shall apply *mutatis mutandis* to any sale made by or under the direction of the court in any such suit.

518 SEC. 7. If the Company shall at any time present to the Trustee for cancellation (and not in exchange for engraved bonds) more than all of the outstanding issue of temporary or interim bonds, the Trustee shall receive and cancel said temporary or interim bonds, and thereupon the Trustee will surrender, assign, transfer, and deliver to the Company the stocks, bonds, and other securities deposited hereunder, successively in the order of their enumeration in Article 1 of this article (securities substituted upon withdrawal being deemed to take the place, in the order of such enumeration, of the securities so withdrawn), to an amount which shall be proportionate at the then appraised value (without reappraisement for depreciation) to the amount of bonds so canceled, but in such manner that the shares of the Southern Pacific Railroad Company shall not be encroached upon until all the other collateral is exhausted; and provided that if bonds to the amount of one hundred and twenty million French francs (Fcs. 125,000,000) remain issued and standing hereunder, then in that event no part of the shares of the Southern Pacific Railroad Company shall be retired and withdrawn, but all thereof shall remain and continue under such deposit and pledge, subject to the provisions of the indenture; and provided, further, that said order of enumeration may be varied and altered from time to time with the approval of the French banks.

SEC. 8. In case any corporation the stock of which shall be deposited hereunder shall hereafter make any distribution of surplus by dividend or otherwise which shall be payable in stock, there shall be deposited with, or retained by, the Trustee hereunder, for the full

urity of the bonds secured hereby, such an amount of stock as shall be so distributed in respect of the shares of stock at the time adjudged hereunder.

SEC. 9. At any sale made by the Trustee or pursuant to judicial proceedings, of any stocks, bonds or other securities deposited hereunder the Trustee, or any bondholder or his agent, may bid for and purchase such stocks, bonds, or other securities, and may make payment therefor as in section 6 hereof provided, and upon compliance with the terms of sale may hold, retain, and dispose of such stocks, bonds, or other securities without further accountability; and any such sale shall divest all the right, title, and interest at law or in equity of the Pacific Companies, or either of them, in, and to the stocks, bonds, or other securities sold and shall be a perpetual bar against the Pacific Companies, and each of them, their successors, and assigns. In case of any such sale, the Pacific Companies shall join in any deed or other writing which the Trustee or the purchaser may reasonably require as necessary or proper to evidence such sale or to confirm the title acquired thereat.

ARTICLE FIVE.

Other remedies of Trustee and bondholders.

SECTION 1. In case default shall be made in the payment upon demand of any installment of interest then due upon any bond issued hereunder and then outstanding, and such default shall have continued for the period of three months, or in case default shall be made in the due and punctual observance or performance of any of the terms, covenants, conditions, or requirements contained in said bonds and this indenture, and any such last-mentioned default shall have continued for the period of three months after notice thereof by the Trustee to the Company and the Railway Company—then, and in any and every such case, the Trustee, in its discretion, may, upon the written request of the holders of twenty per cent in amount of the bonds issued and then outstanding hereunder, and shall, upon the written request of the holders of twenty-five per cent in amount of the bonds issued hereunder and then outstanding, upon notice in writing delivered to the Railway Company and the Company, declare the principal of all bonds issued hereunder and then outstanding to be due and payable immediately; and upon any such declaration the same shall become and be due and payable to the Trustee immediately, anything in this indenture or in said bonds to the contrary notwithstanding.

This provision, however, is subject to the condition that (1) if at any time after the principal of said bonds shall have been so declared

due and payable for default in the payment of interest thereon arrears of interest upon all such bonds, with interest at the rate of four per cent per annum on overdue installments of interest, and expenses of the Trustee, and all other sums which shall have become due and payable by the Pacific Companies hereunder other than the principal of such bonds, shall either be paid by the Pacific Companies or actually be collected by the Trustee out of the proceeds of said stocks, bonds, and other securities before any sale of any part of said stocks, bonds, or other securities shall have been made; or (2) if the principal of said bonds shall have been declared due and payable because of one or more of the other defaults in this indenture specified, and thereafter such default or defaults shall not have been cured before any sale of any part of the stocks, bonds, or other securities pledged hereunder shall have been made, then, and in every such case, the holders of a majority in amount of the bonds issued hereunder and then outstanding, by written notice to the Trustee, may waive such default or defaults and its or their consequences and rescind the declaration making the principal of said bonds become due; and thereupon the bonds issued hereunder shall again be of their original terms, tenor, and effect. But no such waiver shall extend to or affect any subsequent default or impairment of right or remedy consequent thereon.

SEC. 2. The Pacific Companies severally covenant that in case of default shall be made in the payment upon demand of any installment of interest then due on any bond at any time outstanding under this indenture and the same be continued for the period of three months or in case default shall be made in the payment of the principal of any such bond when the same shall become payable, whether upon maturity of said bonds or upon declaration of default authorized by this indenture, then in either and every such case upon demand of the Trustee, the Pacific Companies will pay to the Trustee, for the benefit of the holders of the bonds and coupons issued hereunder and then outstanding, the whole amount that shall have become due and payable on all such bonds and coupons then outstanding for interest or principal, or both, as the case may be, with lawful interest upon the overdue principal and installments of interest; and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including reasonable compensation of the Trustee, its agents, attorneys, and counsel, and any expenses or liabilities incurred by the Trustee hereunder. The Trustee in its own name and as Trustee of an express trust shall be entitled and empowered to institute such action or proceedings at law or in equity as may be advised by counsel for the collection of the whole sums so due and unpaid or for any other relief, and may prosecute any such action or proceedings to judgment.

nt or final decree, and shall be entitled to recover judgment and al decree for the whole amount due and unpaid in respect of all of said bonds and coupons then outstanding and for deficiencies and for any other appropriate relief.

Sec. 3. The Trustee may, except when expressly restricted the provisions of this indenture, take and prosecute all such asures and remedies at law or in equity, including specific performance, as may be afforded by the laws of the United States or y State thereof to enforce any provision of this indenture or said nds or to prevent or restrain or redress any breach of any term, enant, condition, or requirement in this indenture or in said bonds tained as it may deem conducive to the interests of the holders of h bonds.

All rights of action under this indenture, or under any of said nds or coupons, may be enforced by the Trustee without the position of any of the bonds or coupons or the production thereof on y trial or other proceedings relative thereto, and any such suit or oceedings instituted by the Trustee shall be brought in its name as trustee, and any recovery of judgment, including any judgments for deficiencies, shall be for the ratable benefit of the holders of said nds and coupons.

Any moneys collected by the Trustee under any provision of this indenture after default (including income from or the proceeds of sale of the securities referred to in article four) all be applied, at the date fixed by the Trustee for the distribution such moneys and upon presentation of the several bonds and coupons and stamping thereon the payment if only partially paid, and on surrender thereof if fully paid, as follows: First, to the payment of costs and expenses, including reasonable compensation to the trustee, its agents, attorneys, and counsel, and of all expenses, liabilities, and advances made or incurred by the Trustee, and, second, the principal of the bonds issued and outstanding hereunder shall have become due and payable either by the terms thereof or by declaration as hereinbefore provided or otherwise, then to the payment of the whole amount then owing for interest upon the bonds issued and outstanding hereunder, with lawful interest on the overdue installments of interest without preference or priority of any installment of interest over any other installment of interest, and, third, if the principal of the bonds issued and outstanding hereunder shall have become due and payable either by the terms thereof by declaration as hereinbefore provided or otherwise, then to the payment of the amount then owing or unpaid upon the bonds issued hereunder for principal and interest, with lawful interest on the overdue principal and installments of interest,

without preference or priority of principal over interest, or of interest over principal, or of any installment of interest over any other installment of interest.

SEC. 4. Neither the Railway Company nor the Company will at any time insist upon or plead, or in any manner whatever claim, or to the benefit or advantage of, any stay or extension law now or at any time hereafter in force, and each of them hereby expressly waives the benefit and advantage of any such law or laws; and they severally covenant that they will not hinder, delay, or impede the execution of any power herein granted and delegated to the Trustee (or to the bondholder in the cases stated), but that they will suffer and permit the execution of every such power as though no such law or laws had been made or enacted.

SEC. 5. No holder of any bond or coupon issued hereunder shall have any right to institute any suit, action, or proceeding at law or in equity to enforce any covenant or provision of this indenture for the execution of any trust hereunder, or for the appointment of a receiver or for any other remedy under this indenture, until 527 the holders of twenty-five per cent in amount of the bonds issued hereunder and then outstanding first shall have made a written request to the Trustee and shall have afforded to it reasonable opportunity to institute such action, suit, or proceeding in its name, nor unless also such holders shall have offered to the Trustee adequate security and indemnity against the costs, expenses, and liabilities incurred therein or thereby, and unless the Trustee shall have refused or neglected to comply with such request; and such notification, request, and offer of indemnity are hereby declared in every case, at the option of the Trustee, to be conditions precedent to the bringing of any suit, action, or proceeding by any bondholder under this indenture; it being understood and intended that no one or more holders of bonds or coupons shall have any right in any manner whatsoever to affect, disturb, or prejudice the security of this indenture, his or their action, or to enforce any right under this indenture except in the manner herein provided, and that all proceedings at law or in equity under this indenture shall be instituted, had, and maintained in the manner herein provided and for the equal benefit of all holders of such outstanding bonds and coupons.

528 SEC. 6. Except as herein expressly provided to the contrary, no remedy in this indenture conferred upon or reserved to the Trustee or to the bondholders is intended to be exclusive of any other remedy; but every remedy provided in this indenture shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute; and no particular (but without limiting the application of this section to

her cases) all the rights and remedies in this article mentioned are cumulative to the rights and remedies referred to in article four hereof, and all the respective remedies in this article and in said article mentioned may be pursued independently or simultaneously, at the discretion of the Trustee, or of any holders of bonds issued hereunder, to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein; and every power and remedy given by this article to the Trustee or to the bondholders may be exercised from time to time and as often as may be deemed expedient by the Trustee or by the bondholders, as the case may be. All the obligations, covenants, and conditions on the part of the Pacific Companies, or either of them, herein contained shall be specifically enforceable.

ARTICLE SIX.

Exemption of liability of stockholders, directors, and officers.

No recourse under or upon any obligation, covenant, or agreement contained in this indenture, or in any bond or coupon issued hereunder, or because of the creation of any indebtedness hereunder, shall be had against any incorporator, stockholder, officer, or director of the Pacific Companies or either of them or of any successor corporation, either directly or through the Pacific Companies or either of them, by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any statute or otherwise; it being expressly agreed and understood that this indenture, and the obligations issued hereunder, are solely corporate obligations, and that no personal liability whatever shall attach to or be incurred by the incorporators, stockholders, officers, or directors of the Pacific Companies or either of them, or of any successor corporation, or any of them, because of the incurring of the indebtedness hereby authorized under or by reason of any of the obligations, guaranties, covenants, or agreements contained in this indenture or in any of the bonds or coupons issued hereunder or implied therefrom; and that any and all personal liability of every name and nature, and any and all rights and claims against every such incorporator, stockholder, officer, or director, whether arising at common law or in equity, or created by statute or constitution, are hereby expressly released and waived as a condition of and as part of the consideration for the execution of this indenture and the issue of the bonds and other obligations hereunder.

ARTICLE SEVEN.

Bondholders' declarations.

SECTION 1. Any request, declaration, or other instrument required by this indenture to be signed and executed by bondholders in any number of concurrent writings of similar tenor, and may be signed or executed by such bondholders in person or by agent appointed in writing. Proof of the execution of any such request, or of the writing appointing any such agent, shall be evidence of the ownership of bonds, if made in the following manner, shall be sufficient for any purpose of this indenture and shall be conclusive in favor of the Trustee and the Pacific Companies with regard to

531 action taken under such request or other instrument, namely:—
(a) The fact and date of the signing or execution by the person of any such writing may be proved by (1) the certificate of any officer in any jurisdiction who, by the laws thereof, has power to take acknowledgments within said jurisdiction, that the person signing such writing acknowledged before him the execution thereof, or by (2) an affidavit taken before the like officer or before an officer who has power to administer oaths, of a witness of the execution.

(b) The fact of the holding of any bond or coupon hereunder by any party, and the amount and issue number of any such bond, and the date of his holding the same, may be proved by a certificate executed by any trust company, bank, bankers, or other depository (wherever situated), showing that at the date therein mentioned such person had on deposit with such trust company, bank, bank or other depository the bonds described in such certificate; provided that such certificate shall be deemed by the Trustee to be satisfactory.

SEC. 2. Whenever in this or any other article in this indenture is provided that any action be taken by the holders of twenty per cent or any other portion of the bonds then outstanding, said action may be taken by the holders of such portion acting as a committee, or by or through such representative or representatives as may be by the holders of such portion thereunto duly authorized from time to time.

532 SEC. 3. The Pacific Companies and the Trustee may deem and treat the bearer of any bond or coupons issued hereunder as the absolute owner of such bonds or coupons, as the case may be, for the purpose of receiving payment thereof and for all other purposes, and neither the Railway Company nor the Company nor the Trustee shall be affected by any notice to the contrary.

ARTICLE EIGHT.

Redemption of bonds.

The Railway Company, at its option, may redeem all (but not less than all) of the bonds at any time outstanding hereunder, at the amount of the principal thereof, with accrued interest, on March 1, 1921, or thereafter on any interest date, provided that notice of intention so to redeem shall be given by the Railway Company, by publication in at least one newspaper of general circulation published in the city of New York and one newspaper of general circulation published in the city of Paris, France, at least once in each week for four successive weeks prior to the half-yearly interest date on which such redemption is to be made, the first publication to be not less than six months preceding such redemption date. Each notice shall state that all the bonds then outstanding will be paid off at par and accrued interest at the interest date specified in the notice, at the places and in the manner herein provided with respect to the payment of the bonds at their maturity, and that the interest on the bonds shall cease on and after the interest date so fixed for such redemption.

The Railway Company covenants that after the first publication of each notice of redemption, and at least ten days before the redemption date, it will deposit with the French banks, or either of them, for distribution and payment to the holders of bonds and coupons on the redemption date at the places where the bonds are payable, a sum in French francs sufficient to pay, as in said bonds and in this indenture provided, the principal amount of all of the bonds and matured coupons then outstanding and the coupons maturing on said redemption date, together with such additional sum as may be required to pay the expenses and compensation of the French banks in connection with such distribution and payment. Said deposit shall, as between each of the Pacific Companies and the Trustee, on the one hand, and the holders of said bonds and coupons, on the other hand, be deemed at such redemption date a payment of such bonds.

Notice of election to redeem having been given as aforesaid, the bonds shall become due and payable on the interest date designated for redemption.

If said bonds, with accrued interest to such date, shall be duly paid, or if provision for the payment thereof shall be made by deposit with the French banks, as hereinbefore provided, interest on the bonds shall cease on such redemption date, and all coupons maturing after such date shall be null and void. The bonds presented

for payment must bear the coupons maturing after the redemption date.

On delivery to the Trustee on or before the time fixed for redemption, of proof by affidavit to the satisfaction of the Trustee that notice of redemption has been given by publication in the manner of this article provided, and of proof by certificate or certificates executed and acknowledged by the French banks, or either of them before the ambassador of the United States of America to France, the consul general or vice consul general of the United States in France, or of other proof satisfactory to the Trustee, that deposit of the cash for the purposes of redemption has been made

535 in this article provided, and on payment to the Trustee of its costs and expenses, including reasonable compensation to the Trustee, its agents, attorneys, and counsel, and of all liabilities and advances made or incurred by it, the Trustee shall cancel and satisfy this indenture and shall assign, or cause to be assigned, and shall deliver to the Company, its successors or assigns, all moneys, stocks, bonds, and other securities held by the Trustee hereunder.

ARTICLE NINE.

The Trustee.

The Trustee, for itself and its successors, hereby accepts the trust and assumes the duties herein created and imposed upon it, but subject upon the following terms and conditions, to wit:

SECTION 1. The Trustee shall be protected in acting upon any notice, request, consent, certificate, bond, or other paper or document believed by it to be genuine and to have been signed by the proper party; it may select and employ in and about the execution of the trust suitable agents and attorneys, whose reasonable compensation shall be paid to the Trustee by the Railway Company. Save for gross negligence or willful default, it shall not be liable for

536 any loss or damage, and it shall be under no obligation or duty to perform any act hereunder or defend any suit in respect hereof, unless reasonably indemnified as herein provided. The Trustee may assume that there has been no default under the indenture unless and until it shall have been specifically notified thereof in writing by the holders of not less than one per cent of the amount of the bonds then outstanding hereunder. Excepting herein expressly otherwise provided, the Trustee shall not be bound to recognize any person as a bondholder unless or until his bonds are submitted to the Trustee for inspection, if required, and his title satisfactorily established, if disputed. The recitals of facts in the indenture and in said bonds contained shall be taken as statements

by the Pacific Companies, or one of them, and shall not be construed as made by the Trustee, nor does the Trustee make any representation as to the validity of this indenture or of the bonds issued hereunder and it shall not incur any responsibility in respect of the premises. It shall not be concerned with or accountable for the use of any of the bonds issued hereunder or for the application of the proceeds thereof; and it shall not be answerable for the default or misconduct of any agent or attorney appointed by it in pursuance hereof, if such agent or attorney shall have been selected with reasonable care, nor for anything whatever in connection with this trust, except for gross negligence or willful default.

The Trustee shall be entitled to reasonable compensation for all services rendered by it in the execution of the trusts hereby created, and shall have a first lien upon the property covered by this indenture and the proceeds thereof for such compensation and for its reasonable expenses, liabilities, and counsel fees in such execution.

SEC. 2. The Trustee, or any successor hereafter appointed, may resign by giving written notice of such resignation to the Pacific Companies and by publication of such notice at least once in each week for six successive weeks in a daily newspaper published in the city of New York, and for a like number of times in a daily newspaper published in the city of Paris, France; and upon the assignment, transfer, and delivery of the property by it then held in trust hereunder to its successor in the trust (as in sections 4 and 5 of this article provided) shall be discharged of the trusts hereby created.

SEC. 3. The Trustee, or any successor, or any trustee hereafter appointed, may be removed at any time by an instrument in writing signed by the holders of not less than three-fourths in amount of the bonds issued hereunder and then outstanding and by notice thereof to the Pacific Companies.

SEC. 4. In case at any time the Trustee, or any Trustee hereafter appointed, shall resign or shall be removed or otherwise shall become incapable of acting, a successor may be appointed in the manner following:

The Company shall by resolution of its board of directors appoint a new Trustee, which shall be a trust company of the city of New York in good standing, having a capital and surplus aggregating at least two million dollars, if there be such trust company willing and able to accept the trusts upon customary terms, which Trustee shall be subject to the approval of the French banks; and in case of disapproval by the French banks of the new Trustee so appointed (or of their failure to act), within twenty days after request by the Company for such approval, then the appointment of the new

Trustee hereunder shall be made by a judge of the United States Circuit Court for the Second Circuit, upon reasonable notice to the French banks, who shall have full right to be heard therebefore said judge. The Company shall publish notice of such appointment of a new Trustee once in each week for six successive weeks in a daily newspaper of general circulation published in the city of New York, State of New York.

SEC. 5. Any new Trustee appointed hereunder shall execute, acknowledge, and deliver to the Trustee last in office and also to the Pacific Companies an instrument accepting such appointment hereunder, and thereupon such new Trustee, without any further act or writing, shall become vested with all the rights, powers, trusts, duties, and obligations of its predecessor in the trust, with like effect as if originally named as such Trustee herein; but the Trustee ceasing to act, shall, nevertheless, on the written request of the Company or of the new Trustee, assign, transfer, and deliver to the new Trustee, upon the trusts herein expressed all the moneys, stocks, bonds, and other securities held by such retiring Trustee, and execute and deliver an instrument transferring to such new Trustee upon the trusts herein expressed, all the rights, powers, and trusts of the Trustee so ceasing to act. Should any instrument in writing from the Pacific Companies, or either of them, be required by any new Trustee for more fully and certainly vesting in him the trusts conferring upon such new Trustee such rights, powers, trusts, duties, any and all such instruments in writing shall on request be made, executed, acknowledged, and delivered.

SEC. 6. Any action taken by the Trustee pursuant to any of the powers herein conferred shall be conclusive and binding upon the then owners and holders and all future owners and holders of such bonds and coupons.

SEC. 7. The Pacific Companies will accord to the Trustee such information, data, and records and such inspection of properties as may reasonably require from time to time.

ARTICLE TEN.

General covenants.

SECTION 1. The Pacific Companies severally agree to make, execute, and deliver upon request of the Trustee from time to time such contracts and further instruments or assurances as the Trustee may deem necessary to carry out the purposes hereof, including all and every further acts, deeds, transfers, and assurances for the better assignment, transferring, and pledging to the Trustee all and singular shares of stock deposited hereunder or intended so to be deposited, transferred and pledged as the Trustee shall reasonably require.

SEC. 2. The Pacific Companies respectively agree that their and each of their obligations and liability hereinbefore provided shall continue in respect of the principal of such bonds and the guaranty thereof for the period of thirty years, and in respect to the several coupons and interest installments and the guaranty thereof for the period of ten years, from the date when the same respectively become due and payable, any law or statute of the United States or of any State thereof or of any other country to the contrary notwithstanding; and any of such bonds which shall not be presented for payment or the payment of the guaranty thereof be demanded within thirty years after the same become due and payable, and any coupons appertaining to engraved bonds issued hereunder and any matured interest upon temporary or interim bonds and the payment of any guaranty of such coupons and interest that shall not be demanded, within ten years after such coupons and interest installments, respectively, become due and payable, shall be barred and outlawed for the benefit of the Pacific Companies or either of them, as the case may be.

2 SEC. 3. It is mutually covenanted and agreed that all questions concerning the terms, provisions, and effect of this indenture and of such bonds and coupons, and the rights of the holders thereof, shall be exclusively considered and determined according to law in the United States of America and be adjudicated by the proper judicial tribunals therein.

SEC. 4. All the covenants and obligations herein contained upon the part of any of the parties hereto are, and are intended to be, for the sole and exclusive benefit of the parties hereto and the holders of bonds and coupons issued hereunder. No other person or persons shall have or be entitled to any rights or remedies at law or in equity under the same or for the enforcement of any thereof.

SEC. 5. All requests or other notices required by any provision of this indenture to be given by the Pacific Companies or the Trustee of the French banks, shall be given by being delivered in writing to a representative of the French banks in the city of New York, to be at all times designated and maintained by them for the purpose (by written appointment to be lodged with the Trustee) at the office of such representative in the city of New York, and when so given shall be sufficient. Such notice shall be given (except where otherwise expressly provided in this indenture) at least twenty days before the proposed or contemplated action or event referred to therein; and if at any time no such appointment be in force when such notice may be given by lodging the same with the Trustee addressed to the French banks. To enable the French banks to act on or in respect of any notice, request, or demand which may be made by the Company in respect of any matter provided for under

this indenture, the Pacific Companies will furnish the French with such information, data, and records and accord to it such inspection of properties as they may reasonably require from it in connection therewith.

SEC. 6. The Pacific Companies severally covenant and agree that they will not, directly or indirectly, extend or assent to the extension of the time for payment of any coupon or interest installment on any bond issued hereunder, and will not, directly or indirectly, be a party to or approve of any such arrangement by purchasing or funding such coupons or interest installments or in any other manner.

ARTICLE ELEVEN.

Defeasance.

If (1) the Railway Company and the Company shall at any time deliver to the Trustee for cancellation all the bonds and coupons then issued and outstanding hereunder, or if (2) the Railway Company or the Company shall not more than six months before the maturity of the bonds issued hereunder deposit with the French banks, or either of them, for distribution and payment to the holders of bonds and coupons on the date of maturity at the places where the bonds are payable a sum in French francs sufficient to pay, as in said bonds and in this indenture provided, the principal amount of all of the bonds and coupons outstanding, matured, or then to mature, together with such additional sum as may be required to pay the expenses and compensation of the French banks in connection with such distribution and payment, and shall deliver to the Trustee proof thereof as provided in article eight hereof in the case of redemption, then in either of such cases the Trustee shall and will account for all moneys that may be in its hands as such Trustee and upon payment to the Trustee of all its costs and expenses, including reasonable compensation to the Trustee, its agents, attorneys, and counsel, and of all liabilities and advances made or incurred by it, the Trustee shall assign, transfer, and deliver to the Company or its nominee or nominees all moneys, stocks, bonds, and other securities held by it for the purposes of this trust.

545 Said deposit made with the French banks as aforesaid shall be as between each of the Pacific Companies and the Trustee on the one hand and the holders of bonds and coupons issued hereunder on the other hand, be deemed at their maturity a payment, satisfaction, and discharge of such bonds and coupons; and upon such payment or proof of such payment, certified as above set forth, the Trustee shall be released and discharged of all further liability or accountability to the holder of any such bonds or coupons.

From time to time thereafter the Railway Company shall submit its office in the city of New York such bonds and coupons as received by it canceled from the French banks to the Trustee for inspection and verification.

ARTICLE TWELVE.

SECTION 1. Whenever in this indenture the term "French banks" employed it shall signify the Banque de Paris et des Pays-Bas and the Societe Generale pour favoriser le Developpement du Commerce de l'Industrie en France, both of Paris, France, and their respective successor or successors for the time being. If at any time one said banks shall cease to exist, leaving no successor, then the said term shall be construed to mean the other of said banks, or its successor or successors for the time being; and if at any time both of said banks shall cease to exist and neither of them shall have a successor, then in such case the holders of twenty per centum amount of the bonds then outstanding may, by instrument in writing filed with the Trustee and with the Pacific Companies, designate, constitute, and appoint another bank or banks in France, each having a capital and surplus at least equal to the present capital and surplus of either of the said named French banks, to act hereunder in place and stead of said named French banks as fully in every respect as if originally named hereunder; and pending or failing such appointment in the case stated, but not after such appointment, any notice, request, demand, deposit, or payment herein authorized, permitted, or provided to be served or made upon, delivered or paid to the French banks may be served or made upon or delivered or paid to the Trustee, and any powers or authority herein given to or conferred upon the French banks may be exercised by the Trustee until such appointment be made in the manner stated.

SEC. 2. All the covenants, stipulations, promises, undertakings, and agreements herein contained by or on behalf of the Pacific Companies shall bind their and each of their successors and assigns, whether so expressed or not. For every purpose of this indenture, including the execution, issue, and use of the bonds hereby secured, the terms "Railway Company" and "Company" and "Trustee" include and mean not only the respective parties of the first, second, and third parts hereto, but also their and each of their successors and assigns.

SEC. 3. The word "bondholder" shall include the plural as well as the singular number, unless otherwise expressly indicated. The word "coupons" refers to the interest coupons attached to the engraved bonds issued hereunder. The words "holder" and "bearer" are used interchangeably herein.

In witness whereof the said parties hereto have caused their corporate names to be hereunto subscribed and their respective corporate seals, duly attested, to be affixed, and these presents to be subscribed by their duly authorized officers in four parts, at the city of New York, the first day of March, A. D. 1911.

CENTRAL PACIFIC RAILWAY COMPANY

By _____,

Second Vice President

548 Attest:

_____,

Assistant Secretary.

Witness:

_____.

SOUTHERN PACIFIC COMPANY

By _____,

Vice President

Attest:

_____,

Secretary.

Witness:

_____.

UNITED STATES TRUST COMPANY OF NEW YORK

By _____,

President

Attest:

_____,

Secretary.

Witness:

_____.

549 STATE OF NEW YORK,

County of New York, ss:

On this _____ day of March, A. D. 1911, before me, the undersigned, a notary public in and for the State and county aforesaid, personally appeared William Mahl, to me known, who, being by me duly sworn, did depose and say: That he resides in New York City, New York; that he is the second vice president of the Central Pacific Railway Company, one of the corporations described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

And I do certify that on the same day the foregoing instrument was produced to me in my county by the parties thereto, and

acknowledged and delivered before me by said William Mahl as second vice president and Charles C. Stillman as assistant secretary of the said Central Pacific Railway Company, to be the act and deed of said corporation by them as second vice president and assistant secretary, respectively, and the seal of said corporation as affixed to said deed was attested and proven before me by said Charles C. Stillman as assistant secretary of said corporation. And I do further certify that the said William Mahl and Charles Stillman duly acknowledged that the said corporation executed the said instrument.

Given under my hand and seal of office.

_____,
Notary Public, New York County, New York.

My commission expires ____.

STATE OF NEW YORK,

County of New York, ss:

On this ____ day of March, A. D. 1911, before me, the undersigned, a notary public in and for the State and county aforesaid, personally appeared William V. S. Thorne, to me known, who being duly sworn, did depose and say: That he resides in New York City, New York; that he is a vice president of the Southern Pacific Company, one of the corporations described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation; and that he signed his name thereto in like order.

And I do hereby certify that on the same day the foregoing instrument was produced to me in my county by the parties thereto and acknowledged and delivered before me by said William V. S. Thorne, vice president, and Alexander Millar, as secretary of the said Southern Pacific Company, to be the act and deed of said corporation by them as vice president and secretary, respectively, and the seal of said corporation as affixed to said deed was attested and proven before me by said Alexander Millar, as secretary of said corporation. And I do further certify that the said William V. S. Thorne and Alexander Millar duly acknowledged that the said corporation executed the said instrument.

Given under my hand and seal of office.

_____,
Notary Public, New York County, New York.

My commission expires ____.

552 STATE OF NEW YORK,
County of New York, ss:

On this _____ day of March, A. D. 1911, before me, the undersigned a notary public in and for the State and county aforesaid, personally appeared Edward W. Sheldon, to me known, who, being by me sworn, did depose and say: That he resides in New York City, New York; that he is the president of the United States Trust Company of New York, one of the corporations described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation; and that he signed his name thereto by like order.

And I do certify that on the same day the foregoing instrument was produced to me in my county by the parties thereto, and acknowledged and delivered before me by Edward W. Sheldon as president and _____ as secretary of the said United States Trust Company of New York, to be the act and deed of said corporation, and them as president and secretary, respectively, and the seal of said corporation as affixed to said deed was attested and proved before me by said _____ as secretary of said corporation.

And I do further certify that the said Edward W. Sheldon, _____ duly acknowledged that the said corporation executed the said instrument.

Given under my hand and seal of office.

Notary Public, New York County, New York

My commission expires _____.

554 DEFENDANTS' EXHIBIT No. 30, APRIL 15, 1915.

(Settlement agreement between the United States and the Central Pacific Railroad Company, being an extract from pages 3780 to 3804, Volume VIII, Union Pacific merger suit record.)

Agreement made and entered into the first day of February, 1898, by and between the United States of America, acting by Honorable Lyman J. Gage, Secretary of the Treasury; Honorable Cornelius Bliss, Secretary of the Interior; and Honorable John W. Griggs, Attorney General, appointed by act of Congress approved July 1898, a commission with full power to settle the indebtedness to the United States growing out of the issue of bonds in aid of the construction of the Central Pacific and Western Pacific bond-aided roads, of the first part; the Central Pacific Railroad Company, a corporation created, organized, and existing under the laws of

te of California and of the United States of America, of the
nd part, and Messrs. Speyer & Company, bankers, of the city of
York, of the third part.

Whereas the Central Pacific Railroad Company, as now ex-
isting, was formed by the successive consolidations hereinafter
mentioned, that is to say:

a) Consolidation of the Central Pacific Railroad Company of
ifornia and the Western Pacific Railroad Company into a cor-
oration named the Central Pacific Railroad Company, under articles
association and consolidation dated June 22, 1870.

b) Consolidation of the last-mentioned Central Pacific Railroad
pany, the California and Oregon Railroad Company, the San
cisco, Oakland and Alameda Railroad Company, and the San
quin Valley Railroad Company into a corporation named the
tral Pacific Railroad Company, under articles of association and
olidation dated August 20, 1870.

And whereas the said Central Pacific Railroad Company, party
the second part hereto, is the owner of the following lines of
road with their appurtenances, which are known as and called
bond-aided lines, viz:

A. The line of railroad (about 737.50/100 miles in length) from
oint about five miles west of Ogden to Sacramento, to aid in the
struction of which bonds were from time to time issued by the
ited States to the Central Pacific Railroad Company of Cali-
fornia to the amount in the aggregate of twenty-five million
eight hundred and eighty-five thousand one hundred and
twenty dollars (\$25,885,120) under and in pursuance of the
visions of the act of Congress of the United States, entitled "An
to aid in the construction of a railroad and telegraph line from
Missouri River to the Pacific Ocean, and to secure to the Govern-
nt the use of the same for postal, military, and other purposes,"
proved July 1, 1862, the act to amend the last mentioned act, ap-
proved July 2, 1864, and the act to amend the above-mentioned acts,
proved March 3, 1865.

B. The line of railroad (about 123.14/100 miles in length) from
ramento to San Jose, to aid in the construction of which bonds
re from time to time issued by the United States to the Western
ific Railroad Company to the amount in the aggregate of one
lion nine hundred and seventy thousand five hundred and sixty
ars (\$1,970,560) under and in pursuance of the provisions of the
e acts of Congress under which bonds were issued to the Central
ific Railroad Company of California, as above stated.

And whereas the said Central Pacific Railroad Company is also the
ner of the following lines of railroad in the State of California,

with their appurtenances, which are known as and called the bond-aided lines, viz:

557 C. The line of railroad (about 24.31/100 miles in length) from Oakland to Niles.

D. The line of railroad (about 146.8/100 miles in length) from Lathrop to Goshen.

E. The line of railroad (about 296.50/100 miles in length) from Roseville to the Oregon boundary.

And whereas the said bond-aided lines of railroad are covered by the following mortgages and liens, viz:

First. The bond-aided line from Sacramento to the eastern boundary of California by the first mortgage of the Central Pacific Railroad Company of California to D. O. Mills and William E. Barron, trustees, dated July 25, 1865, under which bonds are now outstanding to the amount at their face value of six million three hundred and seventy-eight thousand dollars (\$6,378,000), of which bonds to the amount of three million and seven thousand dollars (\$3,007,000) are now overdue, and bonds to the amount of three million three hundred and seventy-one thousand dollars (\$3,371,000) will mature December 1, 1899.

Second. The bond-aided line from the eastern boundary of California to a point about five miles west of Ogden by the first mortgage of the Central Pacific Railroad Company of California to D. O. Mills and William E. Barron, trustees, dated January 1, 1867, under which bonds are now outstanding to the amount at their face value of nineteen million five hundred and three thousand dollars (\$19,503,000), of which bonds to the amount of eighty thousand dollars (\$80,000) are now overdue, and bonds to the amount of three million nine hundred and eighty-eight thousand dollars (\$3,988,000) will mature June 1, 1900, and bonds to the amount of fifteen million four hundred and thirty-five thousand dollars (\$15,435,000) will mature June 1, 1901.

Third. The bond-aided line from Sacramento to San Jose by the first mortgage of the Western Pacific Railroad Company to D. O. Mills and William E. Barron, trustees, dated October 28, 1866, under which bonds are now outstanding to the amount at their face value of one million nine hundred and seventy thousand dollars (\$1,970,000), and will mature July 1, 1899.

Fourth. The bond-aided line from a point about five miles west of Ogden to Sacramento by the statutory lien in favor of the United States under the acts of Congress approved July 1, 1862, July 1, 1864, and March 3, 1865, above mentioned, securing the advance of the indebtedness to the United States (amounting to the date of this agreement to the sum of \$53,389,062).

...altling from the issue of bonds to the Central Pacific Railroad Company of California, as aforesaid, to aid in the construction of a bond-aided line, such statutory lien being by said acts subordinate to the liens of the first mortgages of the Central Pacific Railroad Company of California, described in the preceding subdivisions first and second of this recital.

Fifth. The bond-aided line from Sacramento to San Jose by the statutory lien in favor of the United States under the acts of Congress approved July 1, 1862, July 2, 1864, and March 3, 1865, above mentioned, securing the balance of the indebtedness to the United States (amounting as of the date of this agreement to the sum of \$23,662.74), resulting from the issue of bonds to the Western Pacific Railroad Company, as aforesaid, to aid in the construction of said bond-aided line, such statutory lien being by said act subordinate to the lien of the first mortgage of the Western Pacific Railroad Company described in the preceding subdivision third of this recital.

And whereas the said nonbond-aided lines of railroad are covered by the following mortgages and liens, viz:

First. The nonbond-aided line from Oakland to Niles by first mortgage from the Western Pacific Railroad Company to D. O. Mills and William E. Barron, trustees, dated October 28, 1869, under which bonds are now outstanding to the amount at their face value of seven hundred and sixty-five thousand dollars (\$765,000) and will mature July 1, 1899.

Second. The nonbond-aided line from Lathrop to Goshen by first mortgage from the Central Pacific Railroad Company to D. O. Mills and W. C. Ralston, trustees, dated October 1, 1870, under which bonds are now outstanding to the amount at their face value of six million and eighty thousand dollars (\$6,080,000) and will mature October 1, 1900.

Third. The nonbond-aided line from Roseville to the Oregon boundary by first mortgage from the California and Oregon Railroad Company to David S. Dodge and Eugene Kelly, trustees, dated January 1, 1868, and the supplemental mortgage from the Central Pacific Railroad Company as successor of the California and Oregon Railroad Company (by consolidation as aforesaid) to Eugene Kelly and Philo C. Calhoun, trustees, dated January 1, 1872, under which mentioned mortgages bonds are now outstanding to the amount at their face value of ten million three hundred and forty thousand dollars (\$10,340,000), the date of maturity of such last-mentioned bonds having been extended to January 1, 1918, by virtue of extension agreements dated September 27, 1887, and September 25, 1891, respectively;

And whereas all the said bond-aided and nonbond-aided above referred to are further covered by mortgage from the Central Pacific Railroad Company to the Metropolitan Trust Company of the city of New York, trustee, dated April 1, 1889, under which are now outstanding fifty-year five per cent bonds of said Central Pacific Railroad Company maturing April 1, 1939, to the amount of their face value of twelve million two hundred and eighty-three thousand dollars (\$12,283,000), of which bonds to the amount at their face value of \$2,038,000 are now held by the Metropolitan Trust Company of the city of New York as security for the outstanding bonds hereinafter mentioned;

And whereas it is claimed by the United States, but not conceded by the other parties hereto, that under and by virtue of the provisions of an act entitled "An act to alter and amend the act entitled 'An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes,' approved July first, eighteen hundred and sixty-two," and also to alter and amend the act of Congress approved July second, eighteen hundred and sixty-four, in amendment of said first-named act, approved May 7, 1878, the balances of indebtedness to the United States hereinbefore referred to, amounting to the aggregate as of the date of this agreement to the sum of \$58,812,715.48, are also secured by lien declared in said last-mentioned act upon all the railroad lines above mentioned whether aided or nonaided;

And whereas the lands granted to the Central Pacific Railroad Company of California, by the act of Congress of July 1, 1862, as mentioned, and the lands granted to the California and Oregon Railroad Company by act of Congress approved July 25, 1866, with the exceptions and reservations mentioned in the mortgage hereinafter mentioned, were mortgaged by the Central Pacific Railroad Company to Charles Crocker and Silas W. Sanderson, by mortgage dated October 1, 1870, to secure an issue of land bonds of the Central Pacific Railroad Company which matured October 1, 1890, part of which were by extension agreement dated September 1890, extended to October 1, 1900, and of which there are now outstanding bonds to the amount at their face value of \$2,134,000;

And whereas by act of Congress entitled "An act making appropriations to supply deficiencies in the appropriations for the year ending June 30th, eighteen hundred and ninety-eight, and for prior years and for other purposes," approved July 7, 1898, it is among other things provided as follows, viz: "That the Secretary

the Treasury, the Secretary of the Interior, and the Attorney General, and their successors in office, be, and they are hereby, appointed a commission with full power to settle the indebtedness to the Government growing out of the issue of bonds in aid of the construction of the Central Pacific and Western Pacific bond-aided roads, upon such terms and in such manner as may be agreed upon by them, or by a majority of them, and the owners of said railroads: *Provided*, That any and all settlements thus made shall be submitted in writing to the President for his approval or disapproval, and unless approved by him shall not be binding.

That said commission shall not agree to accept a less sum in payment of the amount due the United States than the full amount of the principal and interest and all amounts necessary to reimburse the United States for moneys paid for interest or otherwise: *And also provided*, That said commission are hereby empowered to grant such time or times of payment by installment, and at such rates of interest, to be not less than three per centum per annum, payable semiannually, and with such security as to said commission may seem expedient: *Provided*, *never*, That in any settlement that may be made the final payment in full discharge of said indebtedness shall not be postponed to more than ten years, and the whole amount, principal and interest, shall be paid in equal semiannual installments within the period so fixed, and in any settlement made it shall be provided that if default shall be made in any payment of either principal or interest on any part thereof then the whole sum and all installments, principal and interest, shall immediately become due and payable, notwithstanding any other stipulation of said settlement: *Provided* *further*, That unless the settlement herein authorized be perfected within one year after the passage of this act, the President of the United States shall at once proceed to foreclose all liens now held by the United States against said railroad companies and to collect the indebtedness herein sought to be settled, and nothing in this act contained shall be held to waive or release any right, lien, or cause of action already held by the United States.

That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of twenty thousand dollars to defray the expenses of said commission in making the said settlement."

And whereas it has been agreed by and between the commission appointed by said act and the owners of the railroads above described to settle the indebtedness to the United States growing out of the issue of bonds in aid of the construction of the Central Pacific and Western Pacific bond-aided railroads shall be settled upon the terms and

in the manner hereinafter agreed to, subject to the approval of President of the United States, as provided in said last-mentioned act;

And whereas Messrs. Speyer & Company from time to time initiated the sale of large amounts of the bonds secured by mortgage upon the railroads of the Central Pacific Railroad Company mentioned and are desirous of cooperating in a settlement of matters relating to or affecting the indebtedness of said company and the adjustment of its affairs;

And whereas of the first mortgage bonds of the Central Pacific Railroad Company of California secured upon the bond-aided lines above mentioned, and amounting in the aggregate at their face value to twenty-five million eight hundred eighty-one thousand dollars (\$25,881,000), there have been deposited and still remain on deposit subject to the order of Messrs. Speyer & Company bonds to the amount at their face value of two million five million six hundred and thirteen thousand dollars (\$25,613,000) under a bondholders' agreement, dated August 14, 1897, a copy whereof has been furnished to the party of the first part hereto;

And whereas of the Central Pacific Railroad Company's fifty-five per cent bonds, issued under the mortgage to the Metropolitan Trust Company of the city of New York, dated April 1, 1889, mentioned, amounting in the aggregate (after deducting said bonds so as aforesaid held as security for the said land bonds) to the sum of ten million two hundred and forty-five thousand dollars (\$10,245,000), there have been deposited and still remain on deposit subject to the order of Messrs. Speyer & Company bonds to the amount at their face value, of eight million six hundred and eighty-six thousand dollars (\$8,686,000) under a bondholders' agreement, dated October 1, 1897, a copy whereof has been furnished to the party of the first part hereto;

And whereas the owners of the bonds deposited under the aforesaid agreements of August 14, 1897, and October 1, 1897, have thereby authorized Messrs. Speyer & Company, in their behalf, to negotiate with any other committees or representatives of holders of other securities of said Railroad Company, or with the Government of the United States, or otherwise, for participation in the disposal of the deposited bonds in any plan of readjustment or reorganization or otherwise;

And whereas there have been deposited with committees consisting of F. G. Banbury, M. P., John B. Akroyd, Lord Alwyne Compton, M. P., Daniel Marks, and Joseph Price, in London, and Arthur Belmont, Hon. John G. Carlisle, and George Coppell, in New York, under agreements, copies of which have been furnished to the

the first part, certificates of the capital stock of the Central Pacific Railroad Company to the amount, at their face value, of at least forty-eight million four hundred and one thousand eight hundred dollars (\$38,401,800) out of a total outstanding capital stock of said company, amounting, at its par value, to sixty-seven million two hundred and seventy-five thousand five hundred dollars (\$67,275,500), and the said committees have authorized and requested the said Speyer & Company to negotiate on their behalf with the commission appointed by the act of Congress of July 7, 1868, above referred to, the basis of a settlement under and in pursuance of the said act of the indebtedness to the United States growing out of the issue of bonds in aid of the construction of said Central Pacific and Western Pacific bond-aided railroads above mentioned;

Now, therefore, this agreement witnesseth, that in consideration of the premises the parties hereto have undertaken, covenanted, and agreed, and do hereby undertake, covenant, and agree to and with each other as follows, that is to say:

That the indebtedness to the United States growing out of the issue of bonds in aid of the construction of the Central Pacific and Western Pacific bond-aided railroads shall be, and it hereby is, settled upon the terms and in the manner following, that is to say:

First.—The amount due the United States, being the full amount of the principal and interest, and all amounts necessary to reimburse the United States for moneys paid for interest or otherwise, is hereby found and agreed to be, on the day of the date of this agreement, the sum of fifty-eight million eight hundred and eighty-two thousand seven hundred and fifteen dollars and forty-eight cents (\$58,812,715.48).

Second.—Within thirty days after this settlement shall become binding, by the submission thereof in writing to the President, and the approval thereof, the Central Pacific Railroad Company shall deliver to the Treasurer of the United States its twenty promissory notes, bearing even date herewith, payable respectively on or before the expiration of each successive six months for ten years, counting from the date of this agreement, each note being for one-twentieth of the foregoing sum of \$58,812,715.48, and bearing interest at the rate of three per cent per annum, payable semiannually.

Provided, however, that if default shall be made in any payment of either principal or interest of any of said notes or any part thereof, on all of said notes then outstanding, principal and interest, shall immediately become due and payable, notwithstanding any other provision of this agreement of settlement.

570 Each of the said notes shall be in the following form:
\$2,940,635.78.

SAN FRANCISCO, CAL., *February 1, 1916*

On or before _____ the Central Pacific Railroad Company will pay to the order of the United States of America two million nine hundred and forty thousand six hundred and thirty-five dollars, with interest meantime at the rate of three per cent per annum, payable semiannually, for value received.

This is one of a series of twenty notes given by said railroad company to the United States of America, each for the same principal sum and bearing interest at the same rate but maturing at different dates, that is to say, on or before the expiration of each successive six months for ten years counting from the date hereof. If default shall be made in any payment of either principal or interest of any of said notes or any part thereof, then all of said notes then outstanding, principal and interest, shall immediately become due and payable.

Third.—The payment of the principal and interest of said notes and of the indebtedness represented thereby, shall be secured by the pledge of \$58,820,000, face value, first refunding mortgage four per cent gold bonds issued by the Central Pacific Railroad Company, or its successor company having title to the aforesaid railroads, such bonds to be part of an issue hereinbefore described not exceeding \$100,000,000 in all, one-twentieth part of such pledged bonds to be held as security for each of said notes.

Fourth.—The said refunding bonds so to be pledged as security for the payment of the said notes and interest shall be delivered to the Treasurer of the United States within a reasonable time after settlement becomes binding, for obtaining the deposit of security, with the assent of security owners, and the carrying out of such plan of reorganization or readjustment as may be necessary to enable the Central Pacific Railroad Company, or its successor company, to issue said refunding bonds and make the mortgage to secure the same a valid lien upon the railroads aforesaid in accordance with the requirements herein expressed. A period of ten months from the

delivery of said notes is hereby declared to be *prima facie* a reasonable time, but the Central Pacific Railroad Company agrees to use its best efforts to perfect such mortgage and to deliver such bonds before the expiration of that time; and, on the other hand, should such reorganization or readjustment be delayed by the pendency of judicial proceedings for the purpose of enabling the company which is to make the new mortgage to execute and deliver refunding bonds secured as provided herein or be delayed by adverse litigation, such period is to be correspondingly extended; provided, however, that such period shall not be extended for

use whatever for more than three years from the date of this agreement, except with the written approval of the President of the United States.

If default shall be made in the delivery of the said bonds so to pledged within the period hereinabove prescribed for such delivery thereof, including any extension which there may have been under the foregoing provisions, then the whole amount of the said notes then outstanding, principal and interest, shall immediately become due and payable.

The said first refunding mortgage four per cent gold bonds referred to in article third and this article of this agreement are to run for at least forty-five years, and to bear interest at the rate of four per cent per annum, payable semiannually, and are to be payable, principal and interest, in gold coin of the United States, and are to be a part of an issue not exceeding one hundred million dollars face value secured by mortgage upon all the railroads, equipment, and terminals now owned by the Central Pacific Railroad Company. Such mortgage shall be the first lien upon the said railroads, equipment, and terminals, or shall be secured by deposit collateral security therefor of at least ninety per cent of the now outstanding first mortgage bonds of the Central Pacific Railroad Company of California and Western Pacific Railroad Company referred to in paragraphs first, second, and third in the recitals to this agreement describing the mortgages and liens on bond-aided lines, and of at least seventy-five per cent of the aggregate of all now outstanding bonds of the Central Pacific Railroad Company and of now outstanding bonds of the divisional companies by the consolidation whereof it was formed, including such first mortgage bonds of the Central Pacific Railroad Company of California and Western Pacific Railroad Company. In making such computation as to the amount of deposited bonds, it is agreed that the \$2,038,000 fifty-year five per cent bonds held as security for the outstanding land bonds, as above stated, shall not be counted as outstanding bonds. If any of the mortgages now securing any of the outstanding bonds aforesaid (other than the mortgage securing the land bonds, dated October 1, 1870, above referred to) shall be satisfied and discharged, such satisfaction and discharge thereof shall be deemed to be the equivalent of the deposit of all outstanding bonds now secured thereby as security for the said refunding bonds. The satisfaction and discharge of the said mortgage securing the land bonds, dated October 1, 1870, shall be deemed to be the equivalent of the deposit as security for said refunding bonds of all bonds now secured by that mortgage; provided that the \$2,038,000 fifty-year five per cent bonds held as security for such land bonds shall either be recalled or deposited as security for such refunding bonds.

The mortgage securing such refunding bonds shall be prior in to any lease of the railroads of said Central Pacific Railroad Company or their appurtenances or any portion thereof, and shall be in the form agreed upon by the parties hereto and now identified by the signature of the Attorney General of the United States, unless

574 form thereof should be hereafter modified with the consent of the Attorney General of the United States and the parties of the second part, or its successor company, and the parties to the third part hereto.

Upon the satisfaction of record of any existing mortgage securities or funds held in any sinking fund created or existing or under any such mortgage shall be surrendered to the Railroad Company or its successor company.

The lands granted to the Central Pacific Railroad Company in California and to the California and Oregon Railroad Company above stated are not to be covered by the mortgage securing the refunding bonds. Until the delivery to the Treasurer of the United States of the refunding bonds to be pledged to it under article 10 hereof, secured as aforesaid, all rights of the United States in respect to said granted lands shall remain in full force and effect, but shall not be enforced unless the Central Pacific Railroad Company, or its successor company, shall make default under this agreement; and upon such delivery of said refunding bonds secured as aforesaid, all rights, interest and claims of the United States in, to, and in respect to such lands shall cease and determine.

576 From time to time, as the principal or any part of the principal of said notes shall be paid, the United States and other holders of said notes shall return to said Railroad Company or its successors an equal amount, at their face value, of the refunding bonds with all unmatured coupons appertaining thereto, and, as interest shall be paid upon said notes, the United States and other holders of said notes shall detach and return to said Railroad Company or its successors the coupons appertaining to said bonds representing interest thereon to the date to which interest shall have been paid upon said notes, which coupons shall thereupon be forthwith canceled.

Fifth.—Until the refunding bonds hereinbefore provided for and secured as aforesaid, shall have been delivered to the Treasurer of the United States as security for the said notes, the lien in favor of the United States, reserved in the acts of Congress above mentioned to secure the repayment to the United States of the above-mentioned indebtedness, as such lien now exists, shall remain in full force and effect to the extent of such indebtedness as security for the notes representing such indebtedness; and nothing herein contained shall be deemed to prevent the United States from intervening for

7 protection of its said lien in any legal proceedings brought to foreclose any lien on said railroads or any part thereof or otherwise.

When the Central Pacific Railroad Company or its successor company shall have delivered to the Treasurer of the United States said refunding bonds secured as aforesaid, then the lien in favor of the United States above referred to as then existing shall immediately terminate, and it is hereby, upon the happening of that event, transferred to, the Trustee of the mortgage securing such refunding bonds security for the entire issue of such bonds.

Sixth.—Until the notes to be given by the Central Pacific Railroad Company under article second of this agreement shall have been paid in full, principal and interest, all amounts due to the Central Pacific Railroad Company or its successor company from the United States subsequent to the date of this agreement in respect of services to the United States upon the bond-aided lines from a point about five miles west of Ogden to Sacramento and from Sacramento to San Jose, above referred to, shall, as audited and allowed, be applied by the

United States pro rata on account of the amounts remaining unpaid on such of said notes as shall not have been purchased by Messrs. Speyer & Co. hereunder, such application being first made to the payment of accrued interest thereon and thereafter on account of the principal thereof.

Seventh.—Messrs. Speyer & Company, within one month after the delivery to the United States of the notes referred to in article second hereof, will, against delivery to them of the four earliest maturing notes endorsed to their order by the Secretary of the Treasury on behalf of the United States without recourse to it, pay to the United States the face value of such notes, viz: Eleven million seven hundred and sixty-two thousand five hundred and forty-three dollars and twelve cents (\$11,762,543.12), with accrued interest thereon to date of payment. From and after the time when such payment shall have been made by Messrs. Speyer & Company they shall, until the delivery of such refunding bonds, be entitled to share pro rata with the United States in the lien and all proceeds of the lien in favor of the United States to secure the indebtedness above referred to.

Upon delivery of the said refunding bonds Messrs. Speyer & Company shall be entitled to receive such bonds to the amount of their face value of the principal of said notes then remaining unpaid which are then held by said Speyer & Company.

Within ten days after the maturity of each of said notes held by Messrs. Speyer & Company the said Speyer & Company shall notify the Secretary of the Treasury of the United States whether such matured note and the matured interest on all the notes held by them have been paid to them or not.

Until the refunding bonds hereinbefore provided for secured aforesaid shall have been delivered to the Treasurer of the United States as security for the said notes, all rights of the United States in or to or in respect of the said lien, and in or to or in respect of the lands granted as aforesaid, shall remain unaffected by the transfer of the said notes to Speyer & Company, and all right and title in the United States in the said lien, and in respect of the said lands, shall be deemed to continue in the United States as fully as if the said notes remained in its possession and ownership, save only that the said right and title shall be deemed to be held by the United States for the pro rata benefit of itself and said Speyer & Company, and the United States may bring and maintain any and all actions, suits, and proceedings which it might have brought or maintained if the said notes had all the said notes remained in its possession and ownership, provided that all recoveries, benefits, and advantages derived or obtained through or by means of such actions, suits, proceedings, and acts for the enforcement of such lien and rights shall inure to the pro rata benefit of the United States and said Speyer & Company. In case of any default in payment of the principal or interest of any of said notes, the United States will thereupon proceed for the enforcement of the said lien.

In witness whereof, this agreement has been executed on behalf of the United States of America by Honorable Lyman J. Gage, Secretary of the Treasury, Honorable Cornelius N. Bliss, Secretary of the Interior, and Honorable John W. Griggs, Attorney General, and by the Central Pacific Railroad Company by its president and under corporate seal attested by its secretary; and by Messrs. Speyer & Company under their hands the day and year first above written. Executed in triplicate.

581

LYMAN J. GAGE,
Secretary of the Treasury
CORNELIUS N. BLISS,
Secretary of the Interior
JOHN W. GRIGGS,
Attorney General

Approved:

WILLIAM MCKINLEY

CENTRAL PACIFIC RAILROAD COMPANY

By ISAAC L. REQUA, *President*.

(Central Pacific Railroad Company seal.)

Attest:

W. M. THOMPSON,
Secretary Speyer & Co.

2 DEFENDANTS' EXHIBIT No. 31, APRIL 15, 1915.

(Report of the United States Pacific Railway Commission of December 1, 1887, and a message of President Grover Cleveland transmitting the same, January 7, 1888; 50th Congress, first session; being an extract from volume 2, Senate executive documents, first session, 50th Congress, 1887-1888.)

(Pursuant to agreement of counsel at pages 1898 and 1899 of the testimony, this exhibit may be referred to in the original printed documents, without being copied into the record.)

3 DEFENDANTS' EXHIBIT No. 32, APRIL 15, 1915.

(Senate Report No. 293, 51st Congress, first session, submitted February 17, 1890, to accompany S. 2680, being a report from the committee on the President's message transmitting report of the Pacific Railway Commission; especially that part thereof beginning with page 25 of the report, relating to the Central Pacific Railroad Company, being pages 25 to 78, inclusive, of said report.)

(Pursuant to agreement of counsel at page 1899 of the testimony, this exhibit may be referred to in the original printed documents, without being copied into the record.)

4 DEFENDANTS' EXHIBIT No. 33, APRIL 15, 1915.

(Senate Report No. 830, 53rd Congress, third session, submitted January 28, 1895, from the Committee on Pacific Railroads, entitled "Partial report," especially that part thereof relating to the Central Pacific Railroad Company, pages 93 to 108, inclusive, of said report.)

(Pursuant to agreement of counsel at page 1900 of the testimony, this exhibit may be referred to in the original printed documents, without being copied into the record.)

5 DEFENDANTS' EXHIBIT No. 34, APRIL 15, 1915.

(House of Representatives Report No. 1290, 53rd Congress, second session, submitted by Mr. Reidy, from the Committee on Pacific Railroads, July 21, 1894, to accompany H. R. 7798.)

(Pursuant to agreement of counsel at page 1900 of the testimony this exhibit may be referred to in the original printed documents without being copied into the record.)

(Senate Report No. 778, 54th Congress, first session, submitted May 1, 1896, by Mr. Gear, from the Committee on Pacific Railroads, to accompany S. 2894, which is defendants' Exhibit No. 36.)

(Pursuant to agreement of counsel at page 1901 of the testimony, this exhibit may be referred to in the original printed document without being copied into the record.)

United States Senate.

I, James M. Baker, Secretary of the Senate of the United States of America, do hereby certify that the hereto attached printed document entitled "S. 2894, A bill to amend an act entitled 'An act to aid in the construction of a railroad and telegraph line from the Mississippi River to the Pacific Ocean, and to secure to the Government the right of the same for postal, military, and other purposes,' approved July first, eighteen hundred and sixty-two; also to amend an act approved July second, eighteen hundred and sixty-four, and also an act approved May seventh, eighteen hundred and seventy-eight, both as amended, and to provide for the settlement of claims growing out of the issue of bonds to aid in the construction of certain railroads, and to secure the payment of all indebtedness to the United States of certain companies therein mentioned," is a true and correct printed copy of the original thereof as found in the files of this office, which bill was reported by Mr. Gear from the Committee on Pacific Railroads, April 17, 1896, at the first session of the 54th Congress.

In testimony whereof I hereunto subscribe my name and affix the seal of the Senate of the United States of America this twenty-first day of October, A. D. 1914.

[Seal United States Senate.]

JAMES M. BAKER,

Secretary of the Senate of the United States

[54th Congress, 1st session. Calendar No. 778.]

S. 2894.

In the Senate of the United States.

April 17, 1896.

Mr. Gear, from the Committee on Pacific Railroads, reported the following bill, which was read the first and second times by unanimous consent:

BILL To amend an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July first, eighteen hundred and sixty-two; also to amend an act approved July second, eighteen hundred and sixty-four, and also an act approved May seventh, eighteen hundred and seventy-eight, both an amendment of said first-mentioned act and other acts amendatory thereof and supplemental thereto, and to provide for the settlement of claims growing out of the issue of bonds to aid in the construction of certain railroads, and to secure the payment of all indebtedness to the United States of certain companies therein mentioned.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and directed to ascertain the amounts of the respective indebtedness of the Union Pacific Railroad Company and the Kansas Pacific Railway Company, which the subsidy bonds of the United States were advanced in aid of the construction of the Pacific railroads and branches as of the first day of January, eighteen hundred and ninety-seven, upon the same principle as if the whole sum of said bonds and interest had and to be paid by the United States thereon, and not theretofore repaid by credits on account thereof, were to be paid to the United States in cash on said day; and the said sum shall be computed and ascertained as follows:

First. To the whole of the principal of said subsidy bonds attributable to each of said companies shall be added the interest paid to be paid by the United States upon the same, so as to ascertain the total amounts that would have been due the United States for principal and interest paid on the bonds issued to each of said companies at their maturity if no payments or reimbursements had been made thereon by the companies.

Second. From said amounts so ascertained shall be deducted any payments or reimbursements made by or on behalf of either of said companies upon their indebtedness at any time before the first day of

January, eighteen hundred and ninety-seven, as shall appear in bond and interest accounts of the said companies, respectively, to the United States.

Third. Compute the present worths of the amounts so found of the first day of January, eighteen hundred and ninety-seven, on the basis that money is worth two per centum per annum during the period between the date of average maturity of the said bonds and the first day of January, eighteen hundred and ninety-seven. From the sums so ascertained there shall be deducted the amounts in the sinking fund applicable to the said companies, respectively, in computing the value of any bonds in the said sinking fund at the market value at the time of such computation, as estimated by the Secretary of the Treasury; and said sinking fund shall thereupon be applied as a payment upon the debt of such company to the United

States. The aggregate amounts so arrived at shall be deemed the sums that would be required to be paid on the first day of January, eighteen hundred and ninety-seven, by the said companies for the purpose of completely discharging their debts to the United States.

SEC. 2. That the Union Pacific Railway Company, successor of the Union Pacific Railroad Company and the Kansas Pacific Railway Company, be, and it is hereby, authorized to make, issue, and deliver to the Secretary of the Treasury, who is hereby authorized and directed to receive the same, its certain indenture of mortgage which shall bear date the first day of January, eighteen hundred and ninety-seven, covering and embracing all the lines of railway, rights of way, terminals, terminal properties, bridges, rolling stock, lines of telegraph, and all the then unsold land grant and other lands, and all the then outstanding land and town lot contracts, and all property appurtenant thereto embraced in and covered by existing mortgages of the Union Pacific Railway Company, including its unsubsidized as well as subsidized lines of railway and branches and spurs connected therewith now owned by the Union Pacific Railway Company, the mail lines whereof extend from Council Bluffs, in the State of Iowa, to a point about five miles west of Ogden, in the State of Utah, and from Kansas City, in the State of Missouri, to Denver, in the State of Colorado, and from Denver to Cheyenne, in the State of Wyoming, and from Leavenworth to Lawrence, in the State of Kansas, together with appurtenances thereto belonging, and all rights, franchises and privileges owned by the Union Pacific Railway Company in connection therewith or with the operation thereof. Said mortgage shall constitute a lien upon said properties, junior and subject only to the new first mortgage hereinafter provided for, and shall cover and embrace all the lines of railway, property, franchises, and rights

embraced in and covered by the said first mortgage. A proper and complete description and inventory of all the property affected by such mortgage shall be prepared under the direction of the Secretary of the Treasury, which, when approved by him, shall be filed in his office; and such mortgage on the property therein described shall be held as security for the payment of the principal and interest of the bonds issued thereunder and authorized by this act; but this section shall not be construed to prevent the said company from using or disposing of any of its property or assets, in the ordinary, proper, and lawful course of its current business, in good faith and for valuable consideration, and said company may sell and convey for valuable consideration any lands included in its land grant and apply the proceeds thereof as required by the provisions of the new first mortgage hereinafter provided for: Provided, That every such disposition of any stocks, bonds, securities, or other property owned by said company, whether by sale, pledge, or otherwise, shall be reported to the Secretary of the Treasury within thirty days after such disposition has been made, and that the bonds, stocks, obligations, or other property acquired, with the proceeds of the property so disposed of, shall, except as hereinbefore provided, be disposed of in like manner and with the same power to dispose of the same, be subject to the lien of the said mortgage, and that true and proper descriptions and lists of the same shall be from time to time prepared and filed with the Secretary of the Treasury.

SEC. 3. That the said Union Pacific Railway Company is hereby authorized to make, execute, and issue, under its mortgage aforesaid, to the Secretary of the Treasury of the United States its bonds in an amount equal to the said aggregate amount arrived at as above provided, each of which bonds shall be for the principal sum of one thousand dollars and shall be payable as provided for in this act. Said bonds shall be dated on January first, eighteen hundred and ninety-seven, and shall bear interest at the rate of two per centum per annum, payable semiannually on the first days of July and January in each year, beginning on the first day of July, eighteen hundred and ninety-seven, and continuing until said bonds shall be paid. The said bonds shall at the time of the execution and delivery of the said mortgage be delivered to the Secretary of the Treasury, and shall be received by and on behalf of the United States in payment of said aggregate amounts of indebtedness arrived at, as provided in section one of this act.

SEC. 4. That the Union Pacific Railway Company shall execute and deliver its mortgage and bonds to the United States for the debts of the Union Pacific Railroad Company and of the Kansas Pacific Railway Company to the United States, and the said bonds shall be numbered consecutively from one to a number which will include the

whole amount thereof, and shall be payable in lawful money of United States. Said company shall, on the first day of January each year, for a period of ten years, commencing on the day of January, eighteen hundred and ninety-eight, pay the Secretary of the Treasury of the United States, in addition to the interest which shall then be due on its said bonds, the sum of three hundred and sixty-five thousand dollars per annum; and for ten years commencing on the first day of January, nineteen hundred and eight, shall pay the Secretary of the Treasury, in addition to the interest which shall then be due on its said bonds, the sum of five hundred and fifty thousand dollars per annum; and thereafter, commencing on the first day of January, nineteen hundred and eighteen, said company shall pay to the Secretary of the Treasury, in addition to the interest which shall then be due on its said bonds, the sum of seven hundred and fifty thousand dollars per annum until the whole amount of said bonds shall have been fully paid. The payments of principal shall be applied in payment of the bonds of said company to an amount equal to such payment and in the order of the number of such bonds beginning with the highest unpaid number. Each of said bonds, respectively, when paid, shall thereupon be canceled and surrendered to the company, and no other bonds under said mortgage shall be issued by said company in lieu thereof. When the said bonds under said mortgage securing the same shall be delivered to the Secretary of the Treasury, then, in case the lien thereof is subject to the lien securing the new first-mortgage bonds referred to in clause one of section five hereof, the lien of the United States upon the railroad and property embraced in said mortgage and all other claim of the United States upon any part of the revenues of said property under or by virtue of any existing laws shall cease and terminate. When the bonds issued under section three of this act shall have been paid in full as herein provided, the indebtedness represented thereby shall be wholly discharged and the Secretary of the Treasury shall cancel and discharge the mortgage given to secure the same under this act.

SEC. 5. That for the purpose of refunding its mortgage indebtedness upon such terms as it may be able to agree upon with its security holders and as will enable it to effect the settlement of its indebtedness to the United States as herein provided, the said Union Pacific Railway Company is hereby authorized and empowered to issue new mortgage bonds and stock within the limitations defined in section: *Provided, however,* That out of the use or proceeds of the new securities hereby authorized to be made and issued, otherwise, all existing bonds secured by mortgages upon

part of the railway property and lands of the Union Pacific

ilway Company shall be retired and extinguished and the mortgages securing the same shall be satisfied and discharged, with effect that the new mortgages herein authorized to be made shall be the only liens upon the entire railway property, equipment, lands, and franchises of the Union Pacific Railway Company covered by said existing mortgages, and that the second mortgage herein authorized to be executed to the Secretary of the Treasury of the United States shall upon said entire mortgaged premises be junior and subject to no other lien and charge than the new first mortgage herein authorized securing new bonds to the amount hereinafter limited.

First. It may make, issue, and negotiate its bonds dated January first, eighteen hundred and ninety-seven, and maturing January first, nineteen hundred and forty-seven, and bearing interest at a rate not exceeding four per centum per annum, payable semiannually on the first days of January and July of each year until maturity thereof, to the face amount of all outstanding first-mortgage bonds prior in lien to the lien of the United States on the subsidized part of its railway and those secured by mortgages constituting first liens upon parts of the unsubsidized railway, terminal properties, equipment, or upon lands of the said company, and those secured by mortgages upon the Omaha bridge, amounting in all to the sum of five million seven hundred and thirty-one thousand dollars, and to secure the payment of said bonds by a first mortgage upon the lines of railway, rights of way, terminals, terminal properties, bridges, rolling stock, and equipment, and all the then unsold and grant lands and all the then outstanding land and town-lot contracts and upon all other property embraced in such existing mortgages of the Union Pacific Railway Company, and upon all of its rights, privileges, and franchises.

Second. It may make and issue its preferred stock to an amount not exceeding its present outstanding stock: *Provided, however,* that no dividends for any one year shall be paid upon such preferred stock in excess of the rate of four per centum, nor except out of such net or surplus earnings as shall be acquired by said company in that year and as shall remain after the payment of operating expenses, and the interest upon said new first-mortgage bonds, and the interest and fixed annual sums required to be paid upon said second-mortgage bonds hereinbefore authorized to be issued.

Sec. 6. That in the event that the railroad and property of the Union Pacific Railway Company contemplated to be embraced in the new mortgage in this act authorized shall be sold in any pending foreclosure proceedings or other proceedings now or hereafter instituted, but subject to all the existing liens of the United

States thereon or on any parts thereof, the purchasers of said way and property, who shall have acquired the same subject to the liens of the United States and who shall have filed with the Secretary of the Treasury of the United States their written acceptance of the provisions of this act applicable to the Union Pacific Railway Company within the time hereinafter limited for the filing of such acceptance by the said Union Pacific Railway Company, or within such extended time not exceeding six months, as may for good cause be prescribed by the President of the United States, shall be deemed to have created a corporation by the name and style of "Union Pacific Railway Company". Such purchasers and their associates shall execute with the Secretary of the Treasury of the United States a written instrument, executed by them as incorporators, designating 601 fifteen persons to act as directors of the said corporation, and such persons so designated, or a majority of them, shall meet within thirty days after the filing of such instrument at a place where the annual meetings of the stockholders of the Union Pacific Railway Company are held, and shall elect officers of the new company under the same conditions and requirements and in the same procedure and character of official organization as are prescribed by law and the by-laws of the Union Pacific Railway Company, in respect of a meeting of the directors of said last-named company for like purpose.

Said new corporation shall have the power to acquire all or any part of the railways and properties of the Union Pacific Railway Company and to provide for the said indebtedness of the said last-named company to the United States by the issue to the Secretary of the Treasury of the United States of bonds of the same character and amount as those herein authorized to be made by the Union Pacific Railway Company, secured by mortgage of the same real estate, extent, and relative lien as that authorized to be made by it in section two hereof, and shall have and be entitled to enjoy and exercise the same powers, privileges, franchises, and immunities equal in character, extent, and duration to those which the Union Pacific Railway Company would have had and enjoyed had it accepted and carried out the provisions of this act as herein empowered to do, and shall have power to make, issue, negotiate, and deliver bonds, mortgages, and stock corresponding in character and extent to the like securities which, in such event, the Union Pacific Railway Company would have been entitled to retain in existence and to maintain and issue, and in all its relations and duties to the Government and the public and in the regulation and management of its corporate affairs it shall be substituted to and governed by the provisions of this act.

602 acter, extent, and duration to those which the Union Pacific Railway Company would have had and enjoyed had it accepted and carried out the provisions of this act as herein empowered to do, and shall have power to make, issue, negotiate, and deliver bonds, mortgages, and stock corresponding in character and extent to the like securities which, in such event, the Union Pacific Railway Company would have been entitled to retain in existence and to maintain and issue, and in all its relations and duties to the Government and the public and in the regulation and management of its corporate affairs it shall be substituted to and governed by the provisions of this act.

which would in such event have been applicable to the Union Pacific Railway Company.

SEC. 7. That the statutory lien created and subsisting under and virtue of the act of Congress approved July first, eighteen hundred and sixty-two, and the act of July second, eighteen hundred and sixty-four, and the act of May seventh, eighteen hundred and ninety-eight, to secure the payment of said subsidy bonds issued to the Union Pacific Railroad Company and the Kansas Pacific Railway Company, and the interest thereon, as set forth in said acts, and upon all the property subject to said statutory lien shall be and remain in full force for security for the debts owing by each of said companies to the United States until the issue and delivery to the Secretary of the Treasury of the United States of the bonds and mortgage hereinbefore provided for, to be subject only to the new first mortgage and to the bonds secured thereby and until existing mortgages shall have been satisfied and discharged as hereinbefore provided.

SEC. 8. That the Secretary of the Treasury be, and he is hereby, authorized and directed to ascertain the amount of the respective indebtedness of the Central Pacific Railroad Company of California and the Western Pacific Railroad Company, to which the subsidy bonds of the United States were advanced in aid of the construction of the Pacific railroads and branches, as of the first day of January, eighteen hundred and ninety-seven, upon the same principle as if the whole sum of said bonds and interest paid and to be paid by the United States thereon and not theretofore repaid by credits on account thereof were due and payable to the United States in cash on that day; and the said sum shall be computed and ascertained as follows:

First. To the whole of the principal of the said subsidy bonds attributable to each of said companies shall be added the interest paid or to be paid by the United States upon the same, so as to ascertain the total amounts that would have been due the United States for principal and interest paid on the bonds issued to each of said companies at their maturity if no payments or reimbursements had been made thereon by the companies.

Second. From said amounts so ascertained shall be deducted any payments or reimbursements made by or on behalf of either of said companies upon their indebtedness at any time before the first day of January, eighteen hundred and ninety-seven, as shall appear in the bond and interest accounts of the said companies, respectively, with the United States.

Third. Compute the present worths of the amounts so found as of the first day of January, eighteen hundred and ninety-seven, on the

basis that money is worth two per centum per annum during period between the date of average maturity of the said bonds the first day of January, eighteen hundred and ninety-seven. The sums so ascertained there shall be deducted the amounts in sinking fund applicable to the said companies, respectively, putting the value of any bonds in said sinking fund at their

market value, at the time of such computation, as estimated by the Secretary of the Treasury, and said sinking fund thereupon be applied as a payment upon the debt of such companies to the United States. The aggregate amounts so arriving shall be deemed the sums that would be required to be paid in on the said first day of January, eighteen hundred and ninety-seven by said companies for the purpose of completely discharging their entire debts to the United States.

SEC. 9. That the Central Pacific Railroad Company, successor to the Central Pacific Railroad Company of California and the Western Pacific Railroad Company, be, and is hereby, authorized to issue, and deliver to the Secretary of the Treasury, who is hereby authorized and directed to receive the same, its certain indentured mortgage, which shall bear date the first day of January, eighteen hundred and ninety-seven, covering and embracing the entire property of such company, as at present consolidated, real, personal, mixed, including all the right, title, and interest of such company in any stocks, bonds, or securities, or lands of any branch lines or subsidiary companies in which such company has now any interest, and

beneficial interest which it may have in a certain lease of property to the Southern Pacific Company, as hereinbefore provided, and all railroads now owned or hereafter acquired constructed by said Central Pacific Railroad Company, and all franchises, telegraph lines, rolling stock, fixtures, and property of every kind and description, as well as those which it, its successors or assigns, may hereafter acquire, subject to any bona fide, lawfully prior, and paramount lien, claim, or mortgage upon any railroads, franchises, or property now owned by such company or which such company may hereafter acquire. A proper and complete description and inventory of all the property affected by such mortgage shall be prepared under the direction of the Secretary of the Treasury, and when approved by him shall be filed in his office; and such mortgage on the property therein described shall be held as security for the payment of the principal and interest of the bonds issued thereunder and authorized by this act; but this section or such mortgage shall not be construed to prevent said company from using and disposing of any of its property or assets in the ordinary, proper, and lawful course of its current business in good faith and for valuable consideration, nor to prevent said company from applying the rental

rived from said lease to the payment of dividends to its stockholders to the extent that dividends are permitted by this act; and said company may sell and convey for valuable consideration any lands included in its land grant and apply the proceeds thereof as required by the provisions of any mortgage or liens thereon prior to the mortgage given by this act: *Provided*, That every such disposition of any stocks, bonds, securities, or other property owned by said company, whether by sale, pledge, or otherwise, shall be reported to the Secretary of the Treasury by said company within thirty days after such disposition has been made, and that the bonds, checks, obligations, or other property acquired with the proceeds of property so disposed of shall, except as hereinbefore provided, in the manner and with the same power to dispose of the same, be subject to the lien of the said mortgage, and that true and proper descriptions and lists of the same shall be from time to time prepared and filed with the Secretary of the Treasury.

SEC. 10. That the said Central Pacific Railroad Company is hereby authorized to make, execute, and issue under its mortgage aforesaid bonds in an amount equal to the said aggregate amount arrived at as above provided, each of which bonds shall be for the principal sum of one thousand dollars and shall be payable as provided in this act. Said bonds shall bear interest at the rate of two per centum per annum, payable semiannually on the first days of January and July in each year, beginning on the first day of July, eighteen hundred and ninety-seven, and continuing until the principal and interest on said bonds shall be paid. The said bonds shall, at the time of execution and delivery of the said mortgage, be delivered to the Secretary of the Treasury, and shall be received by and on behalf of the United States as provisional payment of said aggregate amounts arrived at as provided in section seven of this act, and the corporate character of the Central Pacific Railroad Company shall continue until the bonds authorized to be issued under this act shall have been fully paid.

SEC. 11. That the Central Pacific Railroad Company shall execute and deliver its mortgage and bonds to the United States for the use of the Central Pacific Railroad Company of California and the Western Pacific Railroad Company to the United States, and said bonds shall be numbered consecutively from one to a number which will include the whole amount thereof and shall be payable in lawful money of the United States. Said company shall, on the first day of January of each year, for a period of ten years, commencing on the first day of January, eighteen hundred and ninety-eight, pay to the Secretary of the Treasury of the United States, in addition to the interest which shall then be due on its indebtedness, the sum of three hundred and sixty-five thou-

said dollars per annum, and for ten years commencing on the day of January, nineteen hundred and eight, said company shall to the Secretary of the Treasury, in addition to the interest which shall then be due on its indebtedness, the sum of five hundred and fifty thousand dollars per annum, and thereafter, commencing the first day of January, nineteen hundred and eighteen, said company shall pay to the Secretary of the Treasury, in addition to interest which shall then be due on its indebtedness, the sum of one hundred and fifty thousand dollars per annum until the whole amount of said bonds shall have been fully paid. The said payments of principal shall be applied in payment of the bonds of said company to an amount equal to such payment and in the order of the numbers of such bonds, beginning with the highest unpaid number. Each of said bonds, respectively, when paid, shall thereupon be canceled and surrendered to the company, and no other bonds or said mortgage shall be issued by said company in lieu thereof.

610 When such bonds shall have been paid in full as herein provided, the indebtedness of the said companies hereinbefore referred to shall be wholly discharged, and the Secretary of the Treasury shall cancel and discharge the mortgage given to secure the same under this act.

SEC. 12. That the statutory lien created and subsisting under the acts by virtue of the act of Congress approved July first, eighteen hundred and sixty-two, and the act of July second, eighteen hundred and sixty-four, and the act of May seventh, eighteen hundred and seventy-eight, to secure the payment of said subsidy bonds issued to the Central Pacific Railroad Company of California and the Western Pacific Railroad Company and the interest thereon, as set forth in said acts, and upon all the property subject to said statutory lien shall be and remain in full force for security for the debts owing by each of said companies to the United States until all the liens on the property affected by the said mortgage and existing at the time of its delivery and which were created subsequent to the said statutory lien shall have been paid, satisfied, and discharged of record.

SEC. 13. That whenever in the opinion of the President

611 the United States it shall be deemed necessary to the protection of the interests and the preservation of the security of the United States in respect of its lien, mortgage, or other interest in any of the property of the several companies named in this act in which a lien, mortgage, or other incumbrance paramount to the right, title, or interest of the United States in the same property or any part of the same, may exist and be then lawfully liable to be enforced, the Secretary of the Treasury shall, under the direction of the President, redeem or otherwise clear off such paramount lien, mortgage, or other incumbrance by paying the sums lawfully

respect thereof out of the Treasury, and the United States shall thereupon become and be subrogated to all rights and securities heretofore pertaining to the debt, mortgage, lien, or other incumbrance in respect of which such payment shall have been made. Provided, That whenever it shall become necessary for the United States to pay off any part of such paramount incumbrance as aforesaid, the Secretary of the Treasury may require the repayment of money paid for such purpose, with costs, expenses, and interest, and upon the failure of the company for whom such payment shall have been made to make such repayment, with all costs, expenses, and interest thereon, within one year after being notified so to do, the whole indebtedness of said company to the United States shall, at the discretion and option of the President of the United States, become due and payable at any day thereafter, and all the rights of the United States shall thereupon be enforced.

Sec. 14. That said Central Pacific Railroad Company shall be permitted, without impairing the present lien thereof, to extend the time of payment of or refund, by issuing new bonds secured by mortgage, any of the principal of its indebtedness authorized by the fourth section of the act approved July second, eighteen hundred and ninety-four, as amended by act approved March third, eighteen hundred and sixty-five, at a lower rate of interest than it now bears (not to exceed five per centum per annum, payable semiannually).

Sec. 15. That each of the mortgages authorized by provisions of sections two and nine of this act shall contain a covenant providing that, in the event of any default continuing for six months in the regular payment of interest on the bonds secured thereby or of the payments of principal required by sections four and eleven of this act, the entire debt due to the United States in the company making such default shall, at the option of the President of the United States, immediately mature, and the United States shall be thereupon entitled to enter upon and take possession of the mortgaged properties of such defaulting company without applying to the courts or to Congress for authority so to do, or may at its option institute and maintain appropriate proceedings at law or in equity in any court or courts of competent jurisdiction for the enforcement of its claims or liens under said bonds or mortgage; and such mortgages shall also contain such other terms and stipulations in conformity with the provisions of this act as may be deemed necessary efficiently to secure the said bonds and the application thereto of the moneys paid to the Secretary of the Treasury for retiring the principal thereof, and as may be approved by the Secretary of the Treasury of the United States. The said mortgages shall be delivered to the Secretary of the Treasury of the United States, and upon the delivery thereof shall respectively be valid and subsisting mort-

gages each of all the property of said mortgagor company, personal, and mixed, embraced, covered, or required by
614 terms of this act, and such delivery shall have all the effect of recording the same in any place. Said mortgages, or copies thereof certified by the Secretary of the Treasury, shall at all times be open to public inspection under such rules and regulations as said Secretary may prescribe, and for the greater publicity of contents of said mortgages, copies thereof, certified by the Secretary of the Treasury, shall, as soon as may be after their respective delivery, be deposited with and recorded by each of the clerks of the circuit courts of the United States and the clerks of the supreme courts of the Territories of the United States in which the roadbed any part thereof of said companies respectively is situated, and copies and records shall at all times be open to public inspection. All such copies and recording thereof shall be at the expense of the company.

SEC. 16. That in case default should be made at any time in payments on account of principal or interest prescribed herein to be made upon the bonds issued under sections three and ten of this act, no money shall be paid from the United States Treasury for or on account of services rendered to the United States or any department of the Government thereof over or upon the said railroad
615 telegraph lines heretofore aided by the advance of such bonds or upon any railroads or telegraph lines owned, leased, or operated by the said company that issued such bonds until the amounts so in default upon such bonds shall have been fully paid, but the compensation for such services shall be credited upon the amounts so in default.

SEC. 17. That hereafter, so long as any of the bonds authorized by the third and tenth sections of this act shall remain outstanding and unpaid, no dividend shall be paid by the company whose bonds are so outstanding unless the same shall have been actually earned, and unless said company shall have paid all interest due on its bonds, and debt having a lien prior to the Government and all matured installments of principal and interest then due and payable on its debt to the United States under this act, nor unless the said earnings, after deducting all interest accrued, but not payable at the time of the declaration of such dividends, shall be sufficient to warrant the payment thereof. In no event shall either of said companies whose bonds are so outstanding pay any dividend exceeding the rate of four per centum per annum unless the said company shall, at the time of declaring such dividends in excess of four per centum
616 annum, so long as any of the said bonds are held by the United States, pay an amount equal to the excess over four per centum

anum so declared to the Secretary of the Treasury, to be applied to payment of the principal of the highest numbered bonds of such company issued to the Government as herein provided, and unless the earnings of the said company shall suffice to warrant the payment of such excess and also the payment to the Government. Any director or officer who shall declare or pay or aid in declaring or paying a dividend prohibited by this act shall, upon conviction of any court of competent jurisdiction, be punished by imprisonment not exceeding two years or by a fine not exceeding five thousand dollars, or by both such fine and imprisonment.

SEC. 18. That this act shall take effect as to each of the said companies and their branches, respectively, as hereinbefore described, upon the acceptance of the terms by the board of directors of such company in writing, over the corporate seal of such company, signed by its president and attested by its secretary, being filed or deposited with the Secretary of the Treasury, in the case of the Union Pacific Railway Company, on or before January first, eighteen hundred and ninety-seven, and in the case of the Central Pacific Railroad Company within three months after the passage of this act, subject, however, as to the Central Pacific Railroad Company, to the requirements of section nineteen hereof, and, as to such company, to the completion of the settlement and adjustment of this act proposed and provided, but any company which shall not file its acceptance shall take no benefit from this act. Upon the filing of said acceptance and the execution and delivery of the mortgage and bonds referred to in the second, third, ninth, and tenth sections of this act to the Secretary of the Treasury he is authorized and directed to sell any securities held in the sinking fund for said company so accepting and pay the proceeds of such sale to the amount of their value, as estimated under the first and eighth sections of this act, into the Treasury of the United States. Any excess realized from such sale above the value of such securities as estimated under the first and eighth sections of this act shall be paid to the company; any deficiency below such value shall be paid by the said company upon demand made by the Secretary of the Treasury after such sale.

SEC. 19. That the said Central Pacific Railroad Company shall arrange for having the lease now existing between it and the Southern Pacific Company modified so that the Southern Pacific Company shall guarantee the payment by the Central Pacific Railroad Company during the continuation of such lease of the interest on and the installments on account of principal of the bonds issued under the tenth section of this act, as prescribed in the tenth and eleventh sections hereof, and so that in case the Southern Pacific

Company should consent to the termination of such lease before maturity of all such installments payable on account of principal of said bonds, it shall in that event guarantee the payment by the Central Pacific Railroad Company of such interest and installments on account of principal while any bonds issued under the terms of this act shall remain outstanding, and so that said Southern Pacific Company shall consent that the sums, amounting in aggregate to about two million four hundred and thirty-nine thousand dollars, standing credited on the books of the Treasury of the United States to the Central Pacific Railroad Company as compensation for services upon nonaided lines (a portion of which is now in judgment in favor of the Southern Pacific Company) shall be forthwith applied to the payment and cancellation

of the highest numbered bonds of the Central Pacific Railroad Company issued under the provisions of said tenth section of this act, and the filing with the Secretary of the Treasury of a duplicate original of such modified lease, duly executed by the officers of both said companies by authority of their boards of directors, shall constitute an essential part of the acceptance by the Central Pacific Railroad Company of this act. In the event of the termination of such lease by act of the parties thereto, or any abrogation or cancellation of such lease, the principal of the bonds issued under the terms of this act shall, at the option of the President of the United States, immediately mature.

SEC. 20. That either of said companies may, at any time after execution and delivery of their said bonds, pay the whole or a portion of said bonds, by paying the amount thereof, together with the accrued interest thereon, to the Secretary of the Treasury, who shall thereupon cancel the bonds so paid and deliver the bonds canceled to the said company. No bonds so canceled shall be reissued, but the Secretary of the Treasury may, by direction of the President of the United States, sell any of the said bonds which may be unpaid at any time, and the purchase price shall be paid in lawful money of the United States.

SEC. 21. That as to such companies as shall accept the provisions of this act, and in the manner and within the time herein provided as to it, from and after the completion of the said adjustment and settlement, all provisions of law relating to the appointment of Government directors shall be, and the same are hereby, repealed. The said office is hereby abolished, and all provisions of law relating to the collection of any percentage of net earnings, and to the withholding or application of any moneys due or to become due to the United States for any services rendered by either of the said companies or any of its branches or auxiliaries or leased lines, or

an as hereinbefore provided, are hereby repealed, and all such amounts shall (provided the said company shall not be in default of the payment of the interest of the bonds or in the payments required by this act) be paid to the said company as soon as amounts shall have been ascertained; and all provisions of law forbidding either of said companies from mortgaging or pledging its property shall be repealed, and either of said companies shall, after the acceptance of the terms of this act, as hereinbefore provided, have and possess all the usual powers of borrowing money on its credit or on security of any of its assets, and of constructing or extending its railway by consolidation, lease, or otherwise, and of leasing its railway and property or parts thereof, and of acquiring title to land by condemnation proceedings, and such other powers as are or may be granted to and exercised by railway corporations in the respective States and Territories in which the said railway is or may be situated.

SEC. 22. That each of the companies accepting the provisions of this act shall keep its railroad and telegraph line in repair and use, and shall at all times transmit dispatches over said telegraph line, and transport mail, troops, and munitions of war, supplies, and public stores upon said railroad for the Government whenever required to do so by any department thereof, and that the Government shall at all times have the preference in the use of the same for all the purposes aforesaid at fair and reasonable rates of compensation, not to exceed the amounts paid by private parties for the same kind of service; and that said companies hereinbefore mentioned, their successors, lessees, and assigns, shall cooperate in making track connections with all railroads of other companies now or hereafter built to points of junction with their roads; and at any point where two or more railroads shall connect with their roads, either of them, they and their successors, lessees, and assigns shall afford to all such connecting roads equal times, terms, rates, and facilities for the interchange of traffic, both passenger and freight, between such connecting roads and their respective roads and every part thereof. And any contract, arrangement, or device by sale, lease, consolidation, through-car service, or otherwise, intended for or resulting in any preference or advantage whatsoever to any such railroad so connecting at such common point, or which shall subject any such railroad so connecting at any such common point to any prejudice or disadvantage whatsoever, is hereby declared to be unlawful.

SEC. 23. That it shall be the duty of the Attorney General to cause the provisions of this act to be enforced, and he shall take all steps needful to that end, and shall make report to the President each

year or oftener thereon, which report shall be laid before Congress and until the execution and delivery of the bonds and mortgages in this act provided for shall be completed all existing provisions of law relating to said companies, respectively, remain in force.

SEC. 24. That this act and each and every provision thereof severally and respectively be deemed, taken, and held as in alteration and amendment of said act of eighteen hundred and sixty-two and of said act of eighteen hundred and sixty-four and of said act of eighteen hundred and seventy-eight, respectively, and acts amendatory thereof or supplementary thereto, and of all of said acts in so far as they are inconsistent with this act, nor shall anything in this act be construed or taken in anywise to affect or impair the right of Congress at any time hereafter further to alter, amend, or repeal said acts hereinbefore mentioned, and this act shall be subject to alteration, amendment, or repeal, as in the opinion of Congress for justice or the public welfare may require, and nothing herein contained shall be held to deny, exclude, or impair any right or remedy in the premises now existing in favor of the United States. This act shall be published and printed as a public act and in all proceedings may be cited as such.

624 (Endorsement): 54th Congress, 1st session, S. 2894. Calendar No. 778. A bill to amend an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean and to secure to the Government the use of the same for postal, military, and other purposes," approved July first, eighteen hundred and sixty two; also to amend an act approved July second, eighteen hundred and sixty-four, and also an act approved May seventh, eighteen hundred and seventy-eight, both in amendment of said first-mentioned act and other acts amendatory thereof and supplemental thereto, and to provide for the settlement of claims growing out of the issue of bonds to aid in the construction of certain railroads and to secure the payment of all indebtedness to the United States of certain companies therein mentioned. By Mr. Gear. April 17, 1896, read twice.

625 DEFENDANTS' EXHIBIT No. 37, APRIL 15, 1915.

(House of Representatives Report No. 1497, 54th Congress, 1st session, submitted April 25, 1896, by Mr. Powers, from the Committee on Pacific Railroads; to accompany H. R. 8189, which is Defendants' Exhibit No. 38.)

(Pursuant to agreement of counsel, at page 1901 of the testimony this exhibit may be referred to in the original printed document without being copied into the record.)

DEFENDANTS' EXHIBIT No. 38, APRIL 15, 1915.

[54th Congress, 2d session. H. R. 8189.]

(Report No. 1497.)

In the House of Representatives.

April 14, 1896.

r. Powers introduced the following bill; which was referred to the Committee on Pacific Railroads and ordered to be printed.

April 25, 1896.

mitted to the Committee of the Whole House on the state of the Union and ordered to be printed.

January 7, 1897.

dered that one thousand copies, as amended by the Committee on Pacific Railroads, be printed for the use of the House.

(Omit the part struck through and insert the part printed in italics.)

A BILL To amend an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July first, eighteen hundred and sixty-two; also to amend an act approved July second, eighteen hundred and sixty-four, and also an act approved May seventh, eighteen hundred and seventy-eight, both in amendment of said first-mentioned act and other acts amendatory thereof and supplemental thereto, and to provide for the settlement of claims growing out of the issue of bonds to aid in the construction of certain railroads, and to secure the payment of all indebtedness to the United States of certain companies therein mentioned.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and directed to ascertain the amounts of the respective indebtedness of the Union Pacific Railroad Company and the Kansas Pacific Railway Company, to which the subsidy bonds of the United States were advanced in aid of the construction of the Pacific railroads and branches, as of the first day of ~~January~~ *July*, eighteen hundred and ninety-seven, upon the same principle as if the whole of said bonds and interest paid and to be paid by the United States thereon, and not theretofore repaid by credits on account

thereof, were to be paid to the United States in cash on said and the said sum shall be computed and ascertained as follows:

First. To the whole of the principal of said subsidy bonds attributable to each of said companies shall be added the interest or to be paid by the United States upon the same, so as to obtain the total amounts that would have been due the United States for principal and interest paid on the bonds issued to each of said companies at their maturity if no payments or reimbursements had been made thereon by the companies.

Second. From said amounts so ascertained shall be deducted payments or reimbursements made by or on behalf of either of said companies upon their indebtedness at any time before the first day of ~~January~~ July, eighteen hundred and ninety-seven.

shall appear in the bond and interest accounts of the said companies, respectively, with the United States and the amounts heretofore forming part of the sinking fund applicable to the said companies, which shall have been applied toward payment or satisfaction of such subsidy bonds or reimbursements of the United States of amounts paid in respect thereof.

Third. Compute the present worths of the amounts so found on the first day of ~~January~~ July, eighteen hundred and ninety-seven, on the basis that money is worth two per centum per annum during the period between the date of average maturity of the said bonds and the first day of ~~January~~ July, eighteen hundred and ninety-seven. From the sums so ascertained there shall be deducted the amounts in the sinking fund applicable to the said companies, respectively, computing the value of any bonds in the said sinking fund at their market value at the time of such computation, as estimated by the Secretary of the Treasury; and said sinking fund shall thereupon be applied as a payment upon the debt of such company to the United States. The aggregate amounts so arrived at shall be deemed the sums that will be required to be paid on the said first day of ~~January~~ July, eighteen hundred and ninety-seven, by said companies for the purpose of completely discharging their entire debts to the United States.

SEC. 2. That the Union Pacific Railway Company, successor to the Union Pacific Railroad Company and the Kansas Pacific Railway Company, be, and it is hereby, authorized to make, issue, and deliver to the Secretary of the Treasury, who is hereby authorized and directed to receive the same, its certain indenture of mortgage which shall bear date the first day of ~~January~~ July, eighteen hundred and ninety-seven, covering and embracing all the lines of the way, rights of way, terminals, terminal properties, bridges, rolling stock, lines of telegraph, and all the then unsold land grant and

lands, and all the then outstanding land and town-lot contracts, and property appurtenant thereto embraced in and covered by existing mortgages of the Union Pacific Railway Company, including all its subsidized as well as subsidized lines of railway and the branches and spurs connected therewith now owned by the Union Pacific Railway Company, the main lines whereof extend from Council Bluffs, in the State of Iowa, to a point about five miles west of Ogden, in the State of Utah, and from Kansas City, in the State of Missouri, to Denver, in the State of Colorado, and from Denver to Cheyenne, in the State of Wyoming, and from Leavenworth to Lawrence, in the State of Kansas, together with all appurtenances thereto belonging, and all rights, franchises, and privileges owned by the Union Pacific Railway Company in connection therewith or with the operation thereof. Said mortgage shall constitute a lien upon said properties junior and subject only to the new first mortgage hereinafter provided for, and shall cover and embrace all the lines of railway, property, franchises, and rights embraced in and covered by the said first mortgage. A proper and complete description and inventory of all the property affected by such mortgage shall be prepared under the direction of the Secretary of the Treasury, which, when approved by him, shall be filed in his office; and such mortgage on the property therein described shall be held as security for the payment of the principal and interest of the bonds issued hereunder and authorized by this act; but this section or such mortgage shall not be construed to prevent the said company from using or disposing of any of its property or assets, in the ordinary, proper, and lawful course of its current business, in good faith and for valuable consideration, and said company may sell and convey, for valuable consideration, any lands included in its land grant and apply the proceeds thereof as required by the provisions of the new first mortgage hereinafter provided for: *Provided*, That every such disposition of any stocks, bonds, securities, or other property owned by said company, whether by sale, pledge, or otherwise, shall be reported to the Secretary of the Treasury within thirty days after such disposition has been made, and that the bonds, stocks, obligations, or other property acquired, with the proceeds of the property so disposed of, shall, except as hereinbefore provided, in like manner and with the same power to dispose of the same, be subject to the lien of the said mortgage, and that true and proper descriptions and lists of the same shall be from time to time prepared and filed with the Secretary of the Treasury.

Sec. 3. That the said Union Pacific Railway Company is hereby authorized to make, execute, and issue, under its mortgage aforesaid, to the Secretary of the Treasury of the United States, its bonds in an amount equal to the said aggregate amount arrived at as above

provided, each of which bonds shall be for the principal sum of one thousand dollars, and shall be payable as provided for in this act. Said bonds shall be dated on ~~January~~ *July* first, eighteen hundred and ninety-seven, and shall bear interest at the rate of two per centum per annum, payable semiannually on the first day of ~~July~~ *July* and ~~January~~ *January* in each year, beginning on the first day of ~~July, eighteen hundred and ninety-seven, January, eighteen hundred and ninety-eight,~~ and continuing until said bonds shall be paid. Said bonds shall at the time of the execution and delivery of the mortgage be delivered to the Secretary of the Treasury, and shall be received by and on behalf of the United States as provisional payment of said aggregate amounts of indebtedness arrived at, as provided in section one of this act.

SEC. 4. That the Union Pacific Railway Company shall execute and deliver its mortgage and bonds to the United States for the debts of the Union Pacific Railroad Company and of the Kansas Pacific Railway Company to the United States, and the said bonds shall be numbered consecutively from one to a number which shall include the whole amount thereof, and shall be payable in lawful money of the United States. Said company shall, on the first day of ~~January~~ *July* of each year, for a period of ten years, commencing on the first day of ~~January~~ *July*, eighteen hundred and ninety-eight, pay to the Secretary of the Treasury of the United States, in addition to the interest which shall then be due on its said bonds so to be issued and delivered to him, the sum of five hundred and sixty-five thousand dollars of principal per annum; and for ten years, commencing on the first day of ~~January~~ *July*, nineteen hundred and eight, shall pay to the Secretary of the Treasury, in addition to the interest which shall then be due on said bonds, the sum of five hundred and fifty thousand dollars of principal per annum; and thereafter, commencing on the first day of ~~January~~ *July*, nineteen hundred and eighteen, said company shall pay to the Secretary of the Treasury, in addition to the interest which shall then be due on its said bonds, the sum of seven hundred and fifty thousand dollars of principal per annum until the whole amount of said bonds shall have been fully paid. The payments of principal shall be applied in payment of the bonds of said company to an amount equal to such payment and in the order of the maturity of such bonds, beginning with the highest unpaid number. Each of said bonds, respectively, when paid, shall thereupon be canceled and surrendered to the company, and no other bonds under said mortgage shall be issued by said company in lieu thereof. When the said bonds and mortgage securing the same shall be delivered to the Secretary of the Treasury, then, in case the lien thereof is not

ject only to the lien securing the new first-mortgage bonds referred to in clause one of section five hereof, the lien of the United States upon any of the railroad and property embraced in said mortgage, and all charge or claim of the United States upon any part of the revenues of such property under or by virtue of any existing laws, shall cease and determine. When the bonds issued under section three of this act shall have been paid in full, as herein provided, the indebtedness represented thereby shall be wholly discharged and the Secretary of the Treasury shall cancel and discharge the mortgage given to secure the same under this act.

SEC. 5. That for the purpose of refunding its mortgage indebtedness upon such terms as it may be able to agree upon with its security holders and as will enable it to effect the settlement of its indebtedness to the United States as herein provided, the said Union Pacific Railway Company is hereby authorized and empowered to issue its new mortgage bonds and stock within the limitations defined in this section: *Provided, however,* That out of the use or proceeds of sale of the new securities, hereby authorized to be made and issued, or otherwise, all existing bonds secured by mortgages upon any part of the railway property and lands of the Union Pacific Railway Company shall be retired and extinguished, and the mortgage securing the same shall be satisfied and discharged, with the effect that the new mortgages herein authorized to be made shall be the only liens upon the entire railway property, equipment, lands, and franchises of the Union Pacific Railway Company covered by said existing mortgages, and that the second mortgage herein authorized to be executed to the Secretary of the Treasury of the United States shall upon said entire mortgaged premises be junior and subject to no other lien and charge than the new first mortgage herein authorized, securing new bonds to the amount hereinafter limited.

First. It may make, issue, and negotiate its bonds dated **January** **1** first, eighteen hundred and ninety-seven, and maturing **January** **1** first, nineteen hundred and forty-seven, and bearing interest at a rate not exceeding four per centum per annum, payable semi-annually on the first days of January and July of each year until the maturity thereof, to the face amount of all outstanding first-mortgage bonds prior in lien to the lien of the United States on the subsidized part of its railway, and those secured by mortgages constituting first liens upon parts of the unsubsidized railway, terminal properties, equipment, or upon lands of the said company, and those secured by mortgages upon the Omaha bridge, amounting in all to the sum of fifty-four million three hundred and eighty-eight thousand dollars, and to secure the payment of said

bonds by a first mortgage upon all the lines of railway, right of way, terminals, terminal properties, bridges, rolling stock, and equipment, and all the then unsold land-grant lands, and all the then outstanding land and town-lot contracts, and upon all other property embraced in such existing mortgages of the Union Pacific Railway Company, and upon all of its rights, privileges, and franchises.

Second. It may make and issue its preferred stock to an amount not exceeding its present outstanding stock: *Provided, however,* That no dividends for any one year shall be paid upon such preferred stock in excess of the rate of four per centum nor except out of such net surplus earnings as shall be acquired by said company in that year and as shall remain after the payment of operating expenses and interest upon said new first-mortgage bonds and the interest and fixed annual sums required to be paid upon said second-mortgage bonds hereinbefore authorized to be issued.

638 SEC. 6. That in the event that the railroad and property of the Union Pacific Railway Company contemplated to be embraced in the new mortgage in this act authorized shall be under pending foreclosure proceedings or other proceedings now hereafter instituted, but subject to all the existing liens of the United States thereon or on any parts thereof, the purchasers of said railway and property who shall have acquired the same subject to the liens of the United States and who shall have filed with the Secretary of the Treasury of the United States their written acceptance of the provisions of this act applicable to the Union Pacific Railway Company within the time hereinafter limited for the filing of such acceptance by the said Union Pacific Railway Company or within such extended time not exceeding six months as may for good cause be prescribed by the President of the United States shall be, and they are hereby, together with their associates and their successors created a corporation by the name and style of "Union Pacific Railroad Company." Such purchasers and their associates shall, with the Secretary of the Treasury of the United States a written instrument executed by them as incorporators designated

639 fifteen persons to act as directors of the said corporation, and such persons so designated, or a majority of them, shall meet within thirty days after the filing of such instrument at the place where the annual meetings of the stockholders of the Union Pacific Railway Company are held and shall elect officers of said new company under the same conditions and requirements as to procedure and character of official organization as are prescribed by law and the by-laws of the Union Pacific Railway Company in respect to the meeting of the directors of said last-named company held for the purpose.

Said new corporation shall have the power to acquire all or any part of the railways and properties of the Union Pacific Railway Company and to provide for the said indebtedness of the said last-named company to the United States by the issue to the Secretary of the Treasury of the United States of bonds of the same character and amount as those herein authorized to be made by the Union Pacific Railway Company, secured by mortgage of the same nature, extent, and relative lien as that authorized to be made by it in section two of this act; and shall have and be entitled to enjoy and exercise rights, powers, privileges, franchises, and immunities equal in character, extent, and duration to those which the Union Pacific Railway Company would have had and enjoyed had it accepted and carried out the provisions of this act as herein empowered to do, and shall have power to make, issue, negotiate, and deliver its bonds, mortgages, and stock corresponding in character and extent to the like securities which, in such event, the Union Pacific Railway Company would have been entitled to retain in existence and to make and issue, and in all its relations and duties to the Government and the public, and in the regulation and management of its corporate affairs it shall be substituted to and governed by the provisions of this act which would in such event have been applicable to the Union Pacific Railway Company.

Sec. 7. That the statutory lien created and subsisting under and by virtue of the act of Congress approved July first, eighteen hundred and sixty-two, and the act of July second, eighteen hundred and sixty-four, and the act of May seventh, eighteen hundred and seventy-eight, to secure the payment of said subsidy bonds issued to the Union Pacific Railroad Company and the Kansas Pacific Railway Company, and the interest thereon, as set forth in said acts, and upon all the property subject to said statutory lien shall be and remain in full force for security for the debts owing by each of said companies to the United States until the issue and delivery to the Secretary of the Treasury of the United States of the bonds and mortgages hereinbefore provided for, to be subject only to the new mortgage and to the bonds secured thereby, and until existing mortgages shall have been satisfied and discharged as hereinbefore provided.

Sec. 8. That the Secretary of the Treasury be, and he is hereby, authorized and directed to ascertain the amount of the respective indebtedness of the Central Pacific Railroad Company of California and the Western Pacific Railroad Company, to which the subsidy bonds of the United States were advanced in aid of the construction of the Pacific railroads and branches, as of the first day of January, eighteen hundred and ninety-seven, upon the same principle

as if the whole sum of said bonds and interest paid and to be paid by the United States thereon and not theretofore repaid by credit on account thereof were due and payable to the United States on said day; and the said sum shall be computed and ascertained as follows:

First. To the whole of the principal of the said subsidy bonds attributable to each of said companies shall be added the interest paid or to be paid by the United States upon the same so as to ascertain the total amounts that would have been paid by the United States for principal and interest paid on the bonds due to each of said companies at their maturity if no payments or reimbursements had been made thereon by the companies.

Second. From said amounts so ascertained shall be deducted the payments or reimbursements made by or on behalf of either of said companies upon their indebtedness at any time before the first day of **January** July, eighteen hundred and ninety-seven, as shall appear on the bond and interest accounts of the said companies, respectively, with the United States and any amounts heretofore forming part of the sinking fund applicable to the said companies which shall have been applied toward payment or satisfaction of such subsidy bonds or reimbursements to the United States of amounts paid in respect thereof.

Third. Compute the present worths of the amounts so found as of the first day of **January** July, eighteen hundred and ninety-seven, on the basis that money is worth two per centum per annum during the period between the date of average maturity of the said bonds and the first day of **January** July, eighteen hundred and ninety-seven. From the sums so ascertained there shall be deducted the amounts in the sinking fund applicable to the said companies, respectively, computing the value of any bonds in the said sinking fund at their market value, at the time of such computation, as estimated by the Secretary of the Treasury, and said sinking fund shall thereupon be applied as a payment upon the debts of such companies to the United States. The aggregate amount so arrived at shall be deemed the sums that would be required to be paid in cash on the said first day of **January** July, eighteen hundred and ninety-seven, by said companies for the purpose of completely discharging their entire debts to the United States.

SEC. 9. That the Central Pacific Railroad Company, successor to the Central Pacific Railroad Company of California and the Western Pacific Railroad Company, be, and is hereby, authorized to issue, and deliver to the Secretary of the Treasury, who is hereby authorized and directed to receive the same, its certain indentured mortgage, which shall bear date the first day of **January** July,

thteen hundred and ninety-seven, covering and embracing the
ire property of such company, as at present consolidated,
real, personal, and mixed, including all the right, title, and
interest of such company in any stocks, bonds, or securities,
or lands of any branch lines or auxiliary companies in which
h company has now any interest, and all beneficial interest which
may have in a certain lease of its property to the Southern Pacific
pany, as hereinafter provided, and all railroads now owned or
eafter acquired or constructed by said Central Pacific Railroad
pany, and all their franchises, telegraph lines, rolling stock,
ures, and property of every kind and description, as well as those
ch it, its successors or assigns, may hereafter acquire, subject to
e bona fide, lawfully prior, and paramount lien, claim, or mort-
e upon any railroads, franchises, or property now owned by such
pany or which such company may hereafter acquire. A proper
complete description and inventory of all the property affected
such mortgage shall be prepared under the direction of the Secre-
y of the Treasury, which, when approved by him, shall be filed
his office; and such mortgage on the property therein described
ll be held as security for the payment of the principal and
rest of the bonds issued thereunder and authorized by this act;
this section or such mortgage shall not be construed to pre-
vent said company from using and disposing of any of its
property or assets in the ordinary, proper, and lawful course
of its current business in good faith and for valuable con-
eration, nor to prevent said company from applying the rentals
ved from said lease to the payment of dividends to its stock-
ders to the extent that dividends are permitted by this act; and
company may sell and convey for valuable consideration any
ls included in its land grant and apply the proceeds thereof as
ired by the provisions of any mortgage or liens thereon prior to
mortgage given by this act: *Provided*, That every such disposi-
of any stocks, bonds, securities, or other property owned by
company, whether by sale, pledge, or otherwise, shall be reported
the Secretary of the Treasury by said company within thirty days
r such disposition has been made, and that the bonds, stocks,
gations, or other property acquired with the proceeds of the
erty so disposed of shall, except as hereinbefore provided, in
manner and with the same power to dispose of the same, be
ect to the lien of the said mortgage, and that true and proper
riptions and lists of the same shall be from time to time prepared
filed with the Secretary of the Treasury.

SEC. 10. That the said Central Pacific Railroad Company
is hereby authorized to make, execute, and issue under its

mortgage aforesaid its bonds in an amount equal to the aggregate amount arrived at as above provided, each of said bonds shall be for the principal sum of one thousand dollars and shall be payable as provided in this act. Said bonds shall bear interest at the rate of two per centum per annum, payable semiannually on the first days of January and July in each year, beginning on the first day of ~~July, eighteen hundred and ninety seven~~ *January, eighteen hundred and ninety-eight*, and continuing until said bonds shall be paid. The said bonds shall, at the time of execution and delivery of the said mortgage, be delivered to the Secretary of the Treasury, and shall be received by and on behalf of the United States as provisional payment of said aggregate amounts arrived at as provided in section seven of this act, and the corporate charges of the Central Pacific Railroad Company and its franchises derived from the United States shall continue until the bonds authorized to be issued under this act shall have been fully paid.

SEC. 11. That the Central Pacific Railroad Company shall execute and deliver its mortgage and bonds to the United States and the debts of the Central Pacific Railroad Company of California and the Western Pacific Railroad Company to the United States, and the said bonds shall be numbered consecutively from one to a number which will include the whole amount thereof and shall be payable in lawful money of the United States. Said company shall, on the first day of ~~January~~ *July* of each year, for a period of ten years commencing on the first day of ~~January~~ *July*, ~~eighteen hundred and ninety-eight~~, pay to the Secretary of the Treasury of the United States, in addition to the interest which shall then be due on its indebtedness, the sum of three hundred and sixty thousand dollars of principal per annum, and for ten years commencing on the first day of ~~January~~ *July*, ~~eighteen hundred and eighty-eight~~, said company shall pay to the Secretary of the Treasury, in addition to the interest which shall then be due on its indebtedness, the sum of five hundred and fifty thousand dollars of principal per annum, and thereafter, commencing on the first day of ~~January~~ *July*, ~~eighteen hundred and eighty-eight~~, said company shall pay to the Secretary of the Treasury, in addition to the interest which shall then be due on its indebtedness, the sum of seven hundred and fifty thousand dollars of principal per annum until the whole amount of said bonds shall have been fully paid. The said payments of principal shall be applied in payment of the bonds of said company to an amount equal to such payment and in the order of the number of such bonds, beginning with the highest unpaid number. Each of said bonds, respectively, when paid, shall thereupon be canceled and surrendered to the company, and no other bonds under said

re shall be issued by said company in lieu thereof. When such bonds shall have been paid in full as herein provided, the indebtedness of the said companies hereinbefore referred to shall be wholly discharged, and the Secretary of the Treasury shall cancel and discharge the mortgage given to secure the same under this act.

SEC. 12. That the statutory lien created and subsisting under and virtue of the act of Congress approved July first, eighteen hundred and sixty-two, and the act of July second, eighteen hundred and sixty-four, and the act of May seventh, eighteen hundred and eighty-eight, to secure the payment of said subsidy bonds issued to Central Pacific Railroad Company of California and the Western Pacific Railroad Company, and the interest thereon, as set forth in said acts, and upon all the property subject to said statutory lien, shall be and remain in full force for security for the debts owing by each of said companies to the United States until all the liens on the property affected by the said mortgage and existing at the time of its delivery and which were created subsequent to the said statutory lien shall have been paid, satisfied, and discharged of record.

SEC. 13. That whenever in the opinion of the President of the United States it shall be deemed necessary to the protection of the interests and the preservation of the security of the United States in respect of its lien, mortgage, or other interest in any of the property of the several companies named in this act upon which a lien, mortgage, or other incumbrance paramount to the right, title, or interest of the United States in the same property or any part of the same may exist and be then lawfully liable to be enforced, the Secretary of the Treasury shall, under the direction of the President, redeem or otherwise clear off such paramount lien, mortgage, or other incumbrance by paying the sums lawfully due in respect thereof out of the Treasury, and the United States shall thereupon become and be subordinated to all rights and securities theretofore pertaining to the debt, mortgage, lien, or other incumbrance in respect of which such payment shall have been made: *Provided*, That whenever it shall become necessary for the United States to pay off any part of such paramount incumbrance as aforesaid, the Secretary of the Treasury may require the repayment of all money paid for such purpose, with costs, expenses, and interest, and upon the failure of the company for whom such payment shall have been made to make such repayment, with all costs, expenses, and interest thereon, within one year after being notified so to do, the whole indebtedness of said company to the United States shall, at the discretion and option of the President of the United States, become due and payable at any time thereafter, and all the rights of the United States shall thereupon be enforced.

SEC. 15. That each of the mortgages authorized by the act of March 3, 1879, shall contain the following provisions, to wit: That each mortgage shall contain a provision obligating the mortgagor to pay the principal and interest on the bonds or notes secured thereby within six months after the maturity of the bonds or notes, and in the event of any default continuing for six months in the regular payment of interest on the bonds or notes, or of the payments of principal required by sections ten and eleven of this act, the entire debt due to the United States by the company making such default shall, at the option of the President of the United States, immediately mature, and the United States shall be thereupon entitled to enter upon and take possession of the mortgaged properties of such defaulting company without applying to the courts or to Congress for authority so to do or may at its option institute and maintain appropriate proceedings at law or in equity in any court or courts of competent jurisdiction for the enforcement of its claims or liens under said bonds or mortgages; and such mortgages shall also contain such other terms and stipulations in conformity with the provisions of this act as may be deemed necessary efficiently to secure the said bonds and the application thereto of the moneys paid to the Secretary of the Treasury for retiring the principal thereof, and as may be approved by the Secretary of the Treasury of the United States. The said mortgages shall be delivered to the Secretary of the Treasury of the United States.

States, and upon the delivery thereof shall respectively
652 valid and subsisting mortgages each of all the property
said mortgagor company, real, personal, and mixed, embraced
covered, or required by the terms of this act, and such delivery
have all the effect of recording the same in any place. Said mortgages
gages or copies thereof certified by the Secretary of the Treasury
shall at all times be open to public inspection under such rules and
regulations as the said Secretary may prescribe, and for the greater
publicity of the contents of said mortgages copies thereof certified
by the Secretary of the Treasury shall, as soon as may be after the
respective delivery, be deposited with and recorded by each of the
clerks of the circuit courts of the United States and the clerks of the
supreme courts of the Territories of the United States in which the
roadbed or any part thereof of said companies, respectively, is located,
ated, which copies and records shall at all times be open to public

inspection. All such copies and recording thereof shall be at the expense of the company.

SEC. 16. That in case default should be made at any time in the payments on account of principal or interest prescribed herein to be made upon the bonds issued under sections three and ten of this act, no money shall be paid from the United States Treasury for or on account of services rendered to the United States by any department of the Government thereof over or upon the said railroads or telegraph lines heretofore aided by the advance of subsidy bonds or upon any railroads or telegraph lines owned, leased, or operated by the said company that issued such bonds, until all amounts so in default upon such bonds shall have been fully paid; but the compensation for such services shall be credited upon the amounts so in default.

SEC. 17. That hereafter, so long as any of the bonds authorized by the third and tenth sections of this act shall remain outstanding and unpaid, no dividend shall be paid by the company whose bonds are so outstanding, unless the same shall have been actually earned, or unless said company shall have paid all interest due on its bonded debt having a lien prior to the Government and all matured installments of principal and interest then due and payable on its debt to the United States under this act, nor unless the said earnings, after deducting all interest accrued, but not payable at the time of the declaration of such dividends, shall be sufficient to warrant the payment thereof. In no event shall either of said companies whose bonds are so outstanding pay any dividend exceeding the rate of four per centum per annum unless the said company shall, at the time of declaring such dividends in excess of four per centum per annum, so long as any of the said bonds are held by the United States, pay an amount equal to the excess over four per centum per annum so declared to the Secretary of the Treasury, to be applied to payment of the principal of the highest numbered bonds of such company issued to the Government as herein provided, and unless the earnings of the said company shall suffice to warrant the payment of such excess and also the payment to the Government. Any director or officer who shall declare or pay a dividend in declaring or paying a dividend prohibited by this act shall, upon conviction of any court of competent jurisdiction, be punished by imprisonment not exceeding two years or by a fine not exceeding five thousand dollars, or by both such fine and imprisonment.

SEC. 18. That this act shall take effect as to each of the said companies and their branches, respectively, as hereinbefore described, upon the acceptance of the terms by the board of directors of such

company in writing over the corporate seal of such company, signed by its president and attested by its secretary, being filed
 655 deposited with the Secretary of the Treasury, in the case of the Union Pacific Railway Company, on or before January first, eighteen hundred and ninety-seven, and in the case of the Central Pacific Railroad Company within three months after the passage of this act, subject, however, as to the Central Pacific Railroad Company, to the requirements of section nineteen hereof, and, as to each company, to the completion of the settlement and adjustment in this act proposed and provided, but any company which shall not so file its acceptance shall take no benefit from this act. Upon the filing of said acceptance and the execution and delivery of the mortgage and bonds referred to in the second, third, ninth, and tenth sections of this act to the Secretary of the Treasury he is authorized and directed to sell any securities held in the sinking fund for said company so accepting and pay the proceeds of such sale to the amount of their value, as estimated under the first and eighth sections of this act, into the Treasury of the United States. Any excess realized from such sale above the value of such securities as estimated under the first and eighth sections of this act shall be paid to the company; any deficiency below such value shall be paid by the said company upon demand made by the Secretary of the Treasury after such sale.

656 SEC. 19. That the said Central Pacific Railroad Company shall arrange for having the lease now existing between it and the Southern Pacific Company modified so that the Southern Pacific Company shall guarantee the payment by the Central Pacific Railroad Company during the continuation of such lease of the interest on and the installments on account of principal of the bonds issued under the tenth section of this act, as prescribed in the tenth and eleventh sections hereof, and so that in case the Southern Pacific Company should consent to the termination of such lease before the maturity of all such installments payable on account of principal of said bonds, it shall, in that event, guarantee the payment by the Central Pacific Railroad Company of such interest and installments on account of principal while any bonds issued under the tenth section of this act shall remain outstanding, and so that said Southern Pacific Company shall consent that the sums amounting in the aggregate to ~~two million four hundred and nine thousand eight hundred and eighteen dollars and twenty cents~~ *two million four hundred and fourteen thousand three hundred and twenty-six dollars and twenty-one cents*, standing credited on the books of the Treasury of the United States to the Central Pacific Railroad Company as compensation for services upon nonaided lines (a portion

which is now in judgment in favor of the Southern Pacific Company), together with interest to the first day of July, eighteen hundred and ninety-seven, upon the constituent parts of said aggregate sum to be allowed, but only at the rate of two per centum per annum from the dates of the respective settlements thereof by the accounting officers of the Treasury, except that on amounts ascertained to be due on account of services for the Post Office Department, interest to be computed from the dates of the respective certificates of the Post Office Department, shall be forthwith applied to the payment and cancellation of the highest numbered bonds of the Central Pacific Railroad Company issued under the provisions of said tenth section of this act, and the filing with the Secretary of the Treasury of a duplicate original of such modified lease, duly executed by the officers of both said companies by authority of their boards of directors, shall constitute an essential part of the acceptance by the Central Pacific Railroad Company of this act. In the event of the termination of such lease by act of the parties thereto, or any abrogation or cancellation of such lease, the principal of the bonds issued under the tenth section of this act shall, at the option of the President of the United States, immediately mature.

SEC. 20. That either of said companies may, at any time after the execution and delivery of their said bonds, pay the whole or any portion of said bonds, by paying the amount thereof, together with the accrued interest thereon, to the Secretary of the Treasury, who shall thereupon cancel the bonds so paid and deliver the bonds so canceled to the said company. No bonds so canceled shall be reissued, but the Secretary of the Treasury may, by direction of the President of the United States, sell any of the said bonds which may be unpaid at any time, and the purchase price shall be paid in lawful money of the United States.

SEC. 21. That as to such companies as shall accept the provisions of this act, and in the manner and within the time herein provided for it, from and after the completion of the said adjustment and settlement, all provisions of law relating to the appointment of Government directors shall be, and the same are hereby, repealed, and the said office is hereby abolished and all provisions of law relating to the collection of any percentage of net earnings and to the withholding or application of any moneys due or to become due from the United States for any services rendered by either the said companies or any of its branches or auxiliaries or leased lines, other than as hereinbefore provided, are hereby repealed, and such amounts shall (provided the said company shall not be in default in the payment of the interest of the bonds or in the payments required by this act) be paid to the said company as soon as such amounts shall have been ascertained; and all provisions of law for-

bidding either of said companies from mortgaging or pledging property shall be repealed, and either of said companies shall, at the acceptance of the terms of this act, as hereinbefore provided, have and possess all the usual powers of borrowing money on credit or on security of any of its assets, and of constructing or extending its railway by consolidation, lease, or otherwise, and of leasing its railway and property or parts thereof, and of acquiring title to land by condemnation proceedings, and such other powers as may be granted to and exercised by railway corporations in their respective States and Territories in which the said railway is or may be situated.

SEC. 22. That each of the companies accepting the provisions of this act shall keep its railroad and telegraph line in repair and use, and shall at all times transmit dispatches over said telegraph line, and transport mail, troops, and munitions of war, supplies, and public stores upon said railroad for the Government whenever required to do so by any department thereof, and that the Government shall at all times have the preference in the use of the same for all the purposes aforesaid at fair and reasonable rates of compensation not to exceed the amounts paid by private parties for the same kind of service; ~~and said companies shall at all times afford to all other lines of railroad now built or hereafter to be built equal and reasonable facilities for making connections with them, or either of them, and equal and reasonable facilities for the transportation of freight and passengers thereon; and that the companies hereinbefore mentioned, their successors, lessees, and assigns, shall cooperate in making track connections with all railroads of other companies now or hereafter built to points of junction with their roads; and at any point where two or more railroads shall connect with their roads, or either of them, they and their successors, lessees, and assigns shall afford to all such connecting railroads equal times, terms, rates, and facilities for the interchange of traffic, both passenger and freight, between such connecting roads and their respective roads and every part thereof; and no contract, arrangement, or device, by sale, lease, consolidation, through-car service, or otherwise, intended for or resulting in a preference or advantage whatsoever to any such railroad so connecting at such common point, or which shall subject any such railroad so connecting at any such common point to any prejudice or disadvantage whatsoever, is hereby declared to be unlawful.~~

SEC. 23. That it shall be the duty of the Attorney General to cause the provisions of this act to be enforced, and he shall take all steps needful to that end and shall make report to the President each year or oftener thereon, which report shall be laid before Congress, until the execution and delivery of the bonds and mortgages in

t provided for shall be completed all existing provisions of law
ating to said companies, respectively, shall remain in force.

Sec. 24. That this act and each and every provision thereof shall
erally and respectively be deemed, taken, and held as in alteration
and amendment of said act of eighteen hundred and sixty-two
and of said act of eighteen hundred and sixty-four and of said
act of eighteen hundred and seventy-eight, respectively, and
amendatory thereof or supplementary thereto, and of all of said
s so far as they are inconsistent with this act, nor shall anything
this act be construed or taken in anywise to affect or impair the
ht of Congress at any time hereafter further to alter, amend, or
eal the said acts hereinbefore mentioned, and this act shall be
ject to alteration, amendment, or repeal as in the opinion of Con-
ss justice or the public welfare may require, and nothing herein
tained shall be held to deny, exclude, or impair any right or
edy in the premises now existing in favor of the United States.
s act shall be published and printed as a public act and in all pro-
ings may be cited as such.

Endorsement): 54th Congress, 2d session. H. R. 8189. Report
No. 1497. A bill to amend an act entitled "An act to aid in
the construction of a railroad and telegraph line from the
Missouri River to the Pacific Ocean and to secure to the Gov-
ment the use of the same for postal, military, and other purposes,"
proved July first, eighteen hundred and sixty-two; also to amend
et approved July second, eighteen hundred and sixty-four, and
an act approved May seventh, eighteen hundred and seventy-
t, both in amendment of said first-mentioned act and other acts
ndatory thereof and supplemental thereto, and to provide for the
ement of claims growing out of the issue of bonds to aid in the
truction of certain railroads and to secure the payment of all in-
edness to the United States of certain companies therein men-
ed. By Mr. Powers. April 14, 1896, referred to the Committee
acific Railroads and ordered to be printed. April 25, 1896,
committed to the Committee of the Whole House on the state
of the Union and ordered to be printed. January 7, 1897,
ordered that one thousand copies, as amended by the Com-
ee on Pacific Railroads, be printed for the use of the House.
h Trimble, Clerk.

HOUSE OF REPRESENTATIVES,
Clerk's Office, Washington, D. C.

ereby certify that the attached and foregoing document headed
8189 is a true and correct copy of the House bill, numbered
introduced by Mr. Powers in the 54th Congress, 2nd session,
from time to time pending as shown in the caption on said bill.

In testimony whereof witness my hand and seal this the 20
of October, 1914.

[SEAL.]

SOUTH TRIMBLE

Clerk of the House of Representatives

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DEFENDANTS' EXHIBIT No. 39, APRIL 15, 1915.

(Senate Report No. 20, 55th Congress, first session, sub
April 1, 1897, by Mr. Gear from the Committee on Pacific Rail
to accompany S. 119, which is Defendants' Exhibit No. 40.)

(Pursuant to agreement of counsel at page 1902 of the testi
this exhibit may be referred to in the original printed docu
without being copied into the record.)

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DEFENDANTS' EXHIBIT No. 40, APRIL 15, 1915.

United States Senate.

I, James M. Baker, Secretary of the Senate of the United
of America, do hereby certify that the hereto attached printe
and amendment thereto entitled, respectively, "S. 119. A b
amend an act entitled 'An act to aid in the construction of a rail
and telegraph line from the Missouri River to the Pacific O
and to secure to the Government the use of the same for postal,
tary, and other purposes,' approved July first, eighteen hundre
sixty-two; also to amend an act approved July second, eighteen
dred and sixty-four, and also an act approved May seventh, eigh
hundred and seventy-eight, both in amendment of said first-
tioned act and other acts amendatory thereof and supplement
thereto, and to provide for the settlement of claims growing o
the issue of bonds to aid in the construction of Central Pacific
Western Pacific Railroads," and "Amendment reported by Mr.
from the Committee on Pacific Railroads, to the bill (S. 119)

amend an act entitled 'An act to aid in the construction
667 railroad and telegraph line from the Missouri River to
Pacific Ocean, and to secure to the Government the use of
same for postal, military, and other purposes,' approved July
eighteen hundred and sixty-two; also to amend an act approved
second, eighteen hundred and sixty-four, and also an act appro
May seventh, eighteen hundred and seventy-eight, both in am
ment of said first-mentioned act and other acts amendatory the
and supplemental thereto, and to provide for the settlement of cl
growing out of the issue of bonds to aid in the construction of C
tral Pacific and Western Pacific Railroads, viz: Insert the followi

aid bill and amendment having been introduced and reported, respectively, by Mr. Gear in the 54th Congress are true and correct printed copies of the originals thereof as found in the files of this office.

In testimony whereof I hereunto subscribe my name and affix the seal of the Senate of the United States of America this twenty-third day of October, A. D. 1914.

[Seal, United States Senate.]

JAMES M. BAKER,

Secretary of the Senate of the United States.

[55th Congress, 1st session. Calendar No. 1.]

S. 119.

In the Senate of the United States.

March 16, 1897.

Mr. Gear introduced the following bill; which was read twice and referred to the Committee on Pacific Railroads.

March 18, 1897.

Reported by Mr. Gear, without amendment.

BILL To amend an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July first, eighteen hundred and sixty-two; also to amend an act approved July second, eighteen hundred and sixty-four and also an act approved May seventh, eighteen hundred and seventy-eight, both in amendment of said first-mentioned act and other acts amendatory thereof and supplemental thereto, and to provide for the settlement of claims growing out of the issue of bonds to aid in the construction of Central Pacific and Western Pacific Railroads.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury, the Secretary of the Interior, and the Attorney General, and their successors in office, be, and they are hereby, appointed a commission with full power to settle the indebtedness to the Government growing out of the issue of bonds in aid of the construction of the Central Pacific and bond-aided railroads, upon such terms and in such manner as may be agreed upon by them, or by a majority of them, and the owners of said railroads: *Provided*, That any and all settlements thus made shall be submitted in writing to the President, for his approval or disapproval, and unless approved by him shall not be binding.

Sec. 2. That said commission, or any member of the same, is hereby authorized and empowered to administer oaths, to summon and

compel the attendance and take the testimony of witnesses, and to be produced all papers and documents needed in the course of negotiations.

670 SEC. 3. That the said commission shall, within sixty days after the assembling of any session of Congress, report action to it.

SEC. 4. That in any such settlement made by the said commission with the owners of the said bond-aided Pacific railroads it shall be the duty of the said commission to require the owners of the said bond-aided railroads, as a condition of the settlement, to accept following as part of the settlement:

That each of the companies accepting the provisions of this act shall keep its bond-aided railroad and telegraph lines in repair and use, and shall at all times transmit dispatches over said telegraph line and transport mail, troops, and munitions of war, supplies, and public stores upon said railroad for the Government, whenever required to do so by any department thereof, and that the Government shall at all times have the preference in the use of the same for the purposes aforesaid, at fair and reasonable rates of compensation not to exceed the amounts paid by private parties for the same kind of service; and that said companies hereinbefore mentioned, their

successors, lessees, and assigns, shall cooperate in making 671 connections with all railroads of other companies now or hereafter built to points of junction with their bond-aided roads and at any point where two or more railroads shall connect with the bond-aided roads, or either of them, they, and their successors, lessees, and assigns, shall afford to all such connecting roads equal terms, rates, and facilities for the interchange of traffic, both passenger and freight, between such connecting roads and their respective roads, and every part thereof. And any contract, arrangement, or device, by sale, lease, consolidation, through-car service, or otherwise, intended for or resulting in any preference or advantage whatsoever to any such railroad so connecting at any such common point to any prejudice or disadvantage whatsoever, is hereby declared to be unlawful. That said commissioners, in making any settlement under this act, shall reserve to Congress any and all right now existing to regulate or prescribe the rates of tolls or charges for the transportation of freights or passengers to be charged on any or all of said railroads and all other rights and powers, in respect of said railroads and railroad companies, as they now exist.

SEC. 5. That the sum of twenty thousand dollars, or so much 672 thereof as may be necessary, be, and is hereby, appropriated out of any funds in the Treasury not otherwise appropriated

defray the expenses of said commission in carrying out the provisions of this act.

(Endorsement): 55th Congress, 1st session. Calendar No. 1, S. 119. bill to amend an act entitled "An act to aid in the construction of railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes", approved July first, eighteen hundred and sixty-two; also to amend an act approved July second, eighteen hundred and sixty-four, and also an act approved May seventh, eighteen hundred and seventy-eight, both in amendment of said first-mentioned act and other acts amendatory thereof and supplemental thereto, and to provide for the settlement of claims growing out of the issue of bonds to aid in the construction of Central Pacific and Western Pacific railroads. By Mr. Gear. March 16, 1897, read twice and referred to the Committee on Pacific Railroads. March 18, 1897, reported without amendment.

[55th Congress, 2d session. S. 119.]

In the Senate of the United States.

March 22, 1898.

Ordered to be printed.

amendment reported by Mr. Gear, from the Committee on Pacific Railroads, to the bill (S. 119) to amend an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes", approved July first, eighteen hundred and sixty-two; also to amend an act approved July second, eighteen hundred and sixty-four, and also an act approved May seventh, eighteen hundred and seventy-eight, both in amendment of said first-mentioned act and other acts amendatory thereof and supplemental thereto, and to provide for the settlement of claims growing out of the issue of bonds to aid in the construction of Central Pacific and Western Pacific railroads, viz: Insert the following:
That said commission shall not agree to accept a less sum in settlement of the amount due the United States than the full amount of principal and unpaid interest due at the time of said settlement: and also provided, That said commission are hereby empowered to grant such time or times of payment by installment, and at such rates of interest, and with such security, as to said commission may seem expedient.

675 (Endorsement): 55th Congress, 2d session. S. 119. Amendment reported by Mr. Gear, from the Committee on Pacific Railroads, to the bill (S. 119) to amend an act entitled "An act in the construction of a railroad and telegraph line from the Mississippi River to the Pacific Ocean, and to secure the Government the use of the same for postal, military, and other purposes", approved July first, eighteen hundred and sixty-two; also to amend an act approved July second, eighteen hundred and sixty-four, and also an act approved May seventh, eighteen hundred and seventy-eight, both amendament of said first-mentioned act and other acts amendament thereof and supplemental thereto, and to provide for the settlement of claims growing out of the issue of bonds to aid in the construction of Central Pacific and Western Pacific railroads. March 22, 1898, ordered to be printed.

676 DEFENDANTS' EXHIBIT No. 41, APRIL 15, 1915.

(Senate Document No. 61, 54th Congress, second session, presented by Mr. Gear, being a communication from C. P. Huntington transmitting a copy of a lease by the Central Pacific Railroad to the Southern Pacific Company and amendments thereof to date, including the amendment of 1894. See page 903 of the testimony.)

677 DEFENDANTS' EXHIBIT No. 42, APRIL 15, 1915.

(Senate Document No. 227, 56th Congress, second session, being a letter of May 12, 1900, from the Secretary of the Treasury, Lyman J. Gage, relating to the question of interest upon certain allowed claims for transportation services, being a copy of Exhibit C of defendants' answer.)

678 DEFENDANTS' EXHIBIT No. 43, APRIL 15, 1915.

[61st Congress, 2d session. House of Representatives. Document No. 600.]

Transportation of the Army and Its Supplies.

(Letter from the Acting Secretary of the Treasury, transmitting a copy of a communication from the Secretary of War submitting an estimate of deficiency appropriation for transportation of the Army and supplies. February 7, 1910, referred to the Committee on Appropriations and ordered to be printed.)

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, February 4, 1910.

Sir: I have the honor to transmit herewith, for the consideration of Congress, copy of a communication from the Secretary of War, of the 29th ultimo, submitting an estimate of deficiency in the appropriation for transportation of the Army and its supplies, for the fiscal year ended June 30, 1909, amounting to \$6,317.46.

Respectfully,

CHARLES D. HILLES,
Acting Secretary.

THE SPEAKER OF THE HOUSE OF REPRESENTATIVES.

WAR DEPARTMENT,
Washington, January 29, 1910.

Sir: I have the honor to forward herewith, for transmission to Congress, a deficiency estimate of an appropriation of \$396,317.46 required by the War Department for the service of the fiscal year ended June 30, 1909, for "Transportation of the Army and its supplies."

Very respectfully,

J. M. DICKINSON,
Secretary of War.

THE SECRETARY OF THE TREASURY.

* * * * *

The deficiency is due to the following causes:

1. Cash payments for transportation over the Southern Pacific from July 1, 1908, to January 31, 1909, not anticipated when the estimate for this appropriation for the fiscal year 1909 was prepared, \$5,445.48.

Prior to July 1, 1908, no cash payments were made for transportation over the lines of the Southern Pacific, but all charges for such services were reported to the Treasury and credited on the debt of that road to the Government. Final settlement of that debt was made February 12, 1909, and this office included in its estimates for "Transportation of the Army and its supplies" for the fiscal year 1909 the sum of \$230,000, to pay transportation charges over those services from February 1, 1909, to the close of the fiscal year, June 30, 1909.

The Southern Pacific Company, however, settled its indebtedness on July 1, 1908, in advance of the date when due, necessitating payment of cash of all charges for transportation over its lines for the entire fiscal year. Transportation charges paid and remaining due the Southern Pacific Company for the fiscal year 1909 aggregate

681 \$445,445.48, or \$215,445.48 in excess of the sum it was estimated would be required to make cash payments.

The transportation charges for the period from July 1, 1909, to January 31, 1909, which this office anticipated would be credited to the company's indebtedness to the Government, aggregated \$747.16. Had these charges been credited, as was naturally anticipated, instead of having to be paid in cash, the deficiency now estimated would be that amount less. This is, therefore, simply making available to this department the sum of \$270,747.16 in cash, which the department estimated, and under the law had a right to estimate that it had available on credit to apply on the debt of this company. In other words, of the amount here estimated the foregoing sum is not a real deficiency, but reappropriating in cash an amount which would have been available in credit had conditions remained the same when the estimate for the fiscal year 1909 was prepared, and the deficiency would have been \$125,570.30.

* * * * *

682 DEFENDANTS' EXHIBIT NO. 44, APRIL 15, 1915.

United States Senate.

I, James M. Baker, Secretary of the Senate of the United States of America, do hereby certify that the hereto attached printed bill is entitled "S. 3522. A bill to amend an act entitled 'An act to aid in the construction of a railroad and telegraph line from the Mississippi River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes,' approved July first, eighteen hundred and sixty-two; also to amend an act approved July second, eighteen hundred and sixty-four; and also an act approved May seventh, eighteen hundred and seventy eight, both as amended, and to provide for the settlement of claims growing out of the issue of bonds to aid in the construction of certain railroads, and to secure the payment of all indebtedness to the United States of certain companies therein mentioned," and is a true and correct printed copy of the original thereof, as found in the files of this office, which bill was introduced by Mr. C. W. McNamara January 13, 1897, referred to the Committee on Pacific Railroads, and reported from that committee January 22, 1897, at the second session of the 54th Congress.

In testimony whereof I hereunto subscribe my name and affix the seal of the Senate of the United States of America this twenty-first day of October, A. D. 1914.

[Seal of the United States Senate.]

JAMES M. BAKER,

Secretary of the Senate of the United States

[54th Congress, 2d session. S. 3522. Calendar No. 1442.]

In the Senate of the United States.

January 13, 1897.

Gear introduced the following bill; which was read twice and referred to the Committee on Pacific Railroads.

January 22, 1897.

Reported by Mr. Gear, with amendments.

omit the part struck through and insert the part printed in italics.)

A BILL To amend an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July first, eighteen hundred and sixty-two; also to amend an act approved July second, eighteen hundred and sixty-two, and also an act approved May seventh, eighteen hundred and seventy-eight, both in amendment of said first-mentioned act and other acts amendatory thereof and supplemental thereto, and to provide for the settlement of claims growing out of the issue of bonds to aid in the construction of certain railroads, and to secure the payment of all indebtedness to the United States of certain companies therein mentioned.

As it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury, the Secretary of the Interior, and the Attorney General, and their successors in office be, and they are hereby, appointed a commission with full power to settle the indebtedness of any and all the bond-aided Pacific railroads to the Government, upon such terms and in such manner as may be agreed upon by them, or by a majority of them, and the owners of railroads: *Provided*, That any and all settlements thus made be submitted in writing to the President for his approval or disapproval, and unless approved by him shall not be binding.

Sec. 2. That said commission, or any member of the same, is hereby authorized and empowered to administer oaths, to summon and compel the attendance and take the testimony of witnesses, and cause to be produced all papers and documents needed in the course of their investigations.

Sec. 3. That the said commission shall, within sixty days after the adjournment of the next regular any session of Congress, report their findings to it.

Sec. 4. That in any such settlement made by the said commission of the said bond-aided Pacific railroads it shall be the duty of the

said commission to require said bond-aided railroads, as a condition of the settlement, to accept the following as part of the settlement:

That each of the companies accepting the provisions of said settlement shall keep its railroad and telegraph lines in repair and use the same at all times transmit dispatches over said telegraph lines, and shall 686 transport mail, troops, and munitions of war, supplies, and public stores upon said railroad for the Government, when required to do so by any department thereof, and that the Government shall at all times have the preference in the use of the same for all the purposes aforesaid, at fair and reasonable rates of compensation, not to exceed the amounts paid by private parties for the same kind of service; and that said companies hereinbefore mentioned, their successors, lessees, and assigns, shall cooperate in making connections with all railroads of other companies now or hereafter built to points of junction with their roads; and at any point where two or more railroads shall connect with their roads, or either of them, they and their successors, lessees, and assigns shall afford such connecting roads equal times, terms, rates, and facilities for the interchange of traffic, both passenger and freight, between such connecting roads and their respective roads, and every part thereof. And any contract, arrangement, or device, by sale, lease, conveyance, through-car service, or otherwise, intended for or resulting in any preference or advantage whatsoever to any such railroad connecting at any such common point to any prejudice or 687 advantage whatsoever, is hereby declared to be unlawful. *said commissioners, in making any settlement under the provisions of said act, shall reserve to Congress the right to regulate or prescribe the rates of tolls or charges for the transportation of freights or passengers, and no tolls or charges shall be charged on any or all of said railroads and all other roads, except as may be provided by law, and no powers, in respect of said railroads and railroad companies, shall be taken away from them, now exist.*

SEC. 5. That the sum of twenty thousand dollars, or so much thereof as may be necessary, be, and is hereby, appropriated, out of any funds in the Treasury not otherwise appropriated, to defray the expenses of said commission in carrying out the provisions of said act.

(Endorsement): 54th Congress, 2d session. S. 3522. Calendar No. 1442. A bill to amend an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for military, and other purposes," approved July first, eighteen hundred and sixty-two; also to amend an act approved July 688 eighteen hundred and sixty-four, and also an act approved May seventh, eighteen hundred and seventy-eight, to

amendment of said first-mentioned act and other acts amendatory thereof and supplemental thereto, and to provide for the settlement of claims growing out of the issue of bonds to aid in the construction of certain railroads, and to secure the payment of all indebtedness of the United States of certain companies therein mentioned. By Mr. Gear. January 13, 1897, read twice and referred to the Committee on Pacific Railroads. January 22, 1897, reported with amendments.

DEFENDANTS' EXHIBIT No. 45, APRIL 15, 1915.

[55th Congress, 1st session. H. R. 3750.]

In the House of Representatives.

July 12, 1897.

Mr. Hepburn introduced the following bill; which was referred to the Committee on Pacific Railroads and ordered to be printed.

BILL To amend an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July first, eighteen hundred and sixty-two; also to amend an act approved July second, eighteen hundred and sixty-four; and also an act approved May seventh, eighteen hundred and seventy-eight, both in amendment of said first-mentioned act and other acts amendatory thereof and supplemental thereto, and to provide for the settlement of claims growing out of the issue of bonds to aid in the construction of the Central Pacific and Western Pacific Railroads.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury, the Secretary of the Interior, and the Attorney General and their successors in office be, and they are hereby, appointed a commission with full power to settle the indebtedness to the Government growing out of the issue of bonds in aid of the construction of the Central Pacific and Western Pacific bond-aided railroads upon such terms and in such manner as may be agreed upon by them or by a majority of them and the owners of said railroads: *Provided*, That any and all settlements thus made shall be submitted in writing to the President for his approval or disapproval, and unless approved by him shall not be binding.

Sec. 2. That said commission or any member of the same is hereby authorized and empowered to administer oaths, to summon and compel the attendance and take the testimony of witnesses and cause to be produced all papers and documents needed in the course of their negotiations.

691 SEC. 3. That the said commission shall within sixty
after the assembling of any session of Congress report
action to it.

SEC. 4. That in any such settlement made by the said commission with the owners of the said bond-aided Pacific railroads it shall be the duty of the said commission to require the owners of the bond-aided railroads, as a condition of the settlement, to accept the following as part of the settlement:

That each of the companies accepting the provisions of this act shall keep its bond-aided railroad and telegraph lines in repair and use and shall at all times transmit dispatches over said telegraph and transport mail, troops, and munitions of war, supplies, and public stores upon said railroad for the Government whenever required to do so by any department thereof, and that the Government shall at all times have the preference in the use of the same for all purposes aforesaid at fair and reasonable rates of compensation not to exceed the amounts paid by private parties for the same kind of service, and that said companies hereinbefore mentioned, their

692 successors, lessees, and assigns shall cooperate in making
connections with all railroads of other companies now or hereafter built to points of junction with their bond-aided railroads and at any point where two or more railroads shall connect with their bond-aided roads, or either of them, they and their successors, lessees, and assigns shall afford to all such connecting roads equal times, terms, rates, and facilities for the interchange of traffic, both passenger and freight, between such connecting roads and the respective bond-aided roads, and every part thereof. And any contract, arrangement, or device, by sale, lease, consolidation, through car service or otherwise intended for or resulting in any preference or advantage whatsoever to any such railroad so connecting at such common point to any prejudice or disadvantage whatsoever hereby declared to be unlawful. That said commissioners, in making any settlement under this act, shall reserve to Congress any and now existing rights to regulate or prescribe the rates of tolls or charges for the transportation of freights or passengers to be charged on any or all of said bond-aided railroads and all other rights and powers in respect of said railroads and railroad companies as they now exist.

693 SEC. 5. That the sum of twenty thousand dollars, or so much thereof as may be necessary, be, and is hereby, appropriated, out of any funds in the Treasury not otherwise appropriated, to defray the expenses of said commission in carrying out the provisions of this act.

(Endorsement): 55th Congress, 1st session. H. R. 3750. A bill to amend an act entitled "An act to aid in the construction of a railroad"

and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July first, eighteen hundred and sixty-two; also to amend an act approved July second, eighteen hundred and sixty-four, and also an act approved May seventh, eighteen hundred and seventy-eight, both in amendment of said first-mentioned act and other acts amendatory thereof and supplemental thereto, and to provide for the settlement of claims growing out of the issue of bonds to aid in the construction of the Central Pacific and Western Pacific Railroad. By Mr. Hepburn. July 12, 1897.—Referred to the Committee on Pacific Railroads and ordered to be printed. South Trimble, Clerk.)

HOUSE OF REPRESENTATIVES,
Clerk's Office, Washington, D. C.

I hereby certify that the foregoing and attached document is a true copy of H. R. 3750, introduced by Mr. Hepburn in the House of Representatives July 12, 1897, 55th Congress, 1st session.

Witness my hand and seal this the 23d day of October, 1914.

[SEAL.] SOUTH TRIMBLE,
Clerk, House of Representatives.

DEFENDANTS' EXHIBIT (RUHLENDER) NO. 45A, APRIL 16, 1915.

(Plan of readjustment of the debt of the Central Pacific Railroad Company, which is Exhibit B in the answer of the defendants. Pursuant to agreement of counsel at page 1913 of the testimony, this exhibit may be referred to in the answer without being copied into record.)

DEFENDANTS' EXHIBIT NO. 46, APRIL 16, 1915.

Central Pacific Railway Company.

Articles of association and amendments. Original articles filed July 29, 1899. Amendment filed April 2, 1900. Amendment filed February 27, 1912.

Original articles of association. (Filed July 29, 1899.)

STATE OF UTAH,

County of Salt Lake, ss:

doe all men by these presents:

That we, the undersigned, whose names are hereunto subscribed, do hereby certify and declare that we have, under and in pursuance

of an act of the Legislature of the State of Utah, entitled "An act to provide for the formation of railroad corporations for the purpose of purchasing, owning, maintaining, operating, and extending railroad lines, franchises, properties, and appurtenances; authorizing the issue of bonds, making deeds of trust and mortgages, and defining the rights and powers of such corporations," approved January 22, 1897, and the other laws of the State of Utah applicable thereto, associated ourselves together as a corporation for the purpose of buying, owning, maintaining, operating, and further extending the railroads, rights, property, and franchises hereinbefore described; and we further certify and declare that we have adopted and do hereby adopt the following

ARTICLES OF ASSOCIATION.

ARTICLE 1. The corporate name of the corporation hereby formed shall be "Central Pacific Railway Company." By that name all persons subscribing these articles of association, and all persons who may from time to time become shareholders in the corporation hereby formed, shall have perpetual succession, with power to adopt a common seal, sue and be sued; to acquire, hold, mortgage, and convey property; to make contracts, fix and prescribe tariffs and rates of compensation for the carriage of persons and property, and generally to do all acts necessary or proper to carry into effect the powers and purposes of said corporation.

ART. 2. Said corporation shall continue in existence for a period of fifty years from the date of the filing of these articles of association in the office of the secretary of state of the State of Utah.

ART. 3. Said corporation shall possess all of the powers, rights, and franchises specified, referred to, or provided for in these articles of association; and, also, all of the powers which, by said act of association, entitled, approved January 22, 1897, and such other laws of the State of Utah, corporations formed under, and pursuant to, the said act and laws, are entitled to have, possess, and enjoy as fully as if the provisions of the said act in this behalf were herein set forth in full; and, also, all of the powers, rights, privileges, and franchises of railroad corporations organized under the laws of the State of Utah, or under the laws of other States or Territories of the United States, as hereinafter provided.

ART. 4. The amount of the capital stock of the said corporation shall be eighty-seven million two hundred and seventy-five thousand five hundred dollars (\$87,275,500), which shall be divided into and represented by eight hundred and seventy-two thousand sand seven hundred and fifty-five (872,755) shares of the

ue of one hundred dollars (\$100) each, and each of which shares
all be entitled to one vote at any meeting of stockholders.

Of such capital stock two hundred thousand (200,000) shares of
e hundred dollars (\$100) each may be issued as preferred stock,
d six hundred and seventy-two thousand seven hundred and fifty-
e (672,755) shares of one hundred dollars (\$100) each may be
ued as common stock.

Such preferred stock shall be entitled, in preference and priority
er the common stock of said corporation, to accumulative prefer-
ial dividends from August 1, 1899, up to four per cent per annum
d, payable semiannually, out of net profits of the corporation, as
e same shall be declared by the board of directors thereof, and
all be entitled to a preference and priority over said common stock
respect of capital in case of liquidation or dissolution. Subject to
preferential rights above described, dividends up to four per cent
r annum out of net profits of the corporation, as the same shall be
clared by the board of directors thereof, shall be paid upon the
common stock of the corporation, and the balance of dividends
payable out of net profits of the corporation, as the same shall
be declared by the board of directors thereof, shall be paid *pro*
a upon the preferred and common stock. The directors may adopt
oper by-laws to carry into effect the provisions of this article.

Arr. 5. The number of directors to manage and control the affairs
this corporation shall be seven, a majority of whom shall be suffi-
nt to form a quorum for the transaction of business. The names
l residences of those who shall serve as directors for the first year
l until their successors are chosen and qualified are:

Thomas Marshall, Salt Lake City, Utah.

Jonathan C. Royle, Salt Lake City, Utah.

David B. Hempstead, Salt Lake City, Utah.

Douglas O. Morgan, New York City, N. Y.

Henry Ruhlender, New York City, N. Y.

Charles J. Dodd, New York City, N. Y.

Richard R. Rogers, New York City, N. Y.

Arr. 6. The said corporation is organized and formed for and shall
ve the power to purchase, own, hold, enjoy, maintain, operate,
and further extend the railroads, property, rights, and fran-
chises, or any part thereof, belonging to the Central Pacific
Railroad Company, a corporation heretofore organized under
laws of the State of California and invested with franchises
der acts of Congress of the United States and under the laws of
States of Utah and Nevada.

The said corporation hereby formed shall have the power to
quire, possess, and enjoy the lands and land grants, or any part

thereof, and all rights with respect thereto, of the said Southern Pacific Railroad Company or any or either of its constituent companies; and the said corporation hereby formed shall have power to construct or acquire by lease, purchase, consolidation, ownership of capital stock or otherwise, branches, extensions, and connections or auxiliary lines, within or without this State, as the board of directors may from time to time deem expedient and as may be authorized by law.

The termini of the said railroad which the said corporation hereby formed is authorized to acquire, enjoy, and operate as now constructed, and the States and counties through which the said railroad passes are as follows, to wit:

The railroads extending from a point about five miles west of Ogden, in the county of Weber, in the State of Utah, through the counties of Weber and Box Elder, in said State of Utah, and the counties of Elko, Eureka, Lander, Humboldt, Churchill, Lyon, and Washoe, in the State of Nevada, and the counties of Sierra, Nevada, Placer, and Sacramento, in the State of California, to and into the city of Sacramento, in said last-mentioned county and State; and from said Sacramento through the counties of Sacramento, San Joaquin, Alameda, and Santa Clara, in the State of California, to San Jose in the last-mentioned county and State; and from Niles, in the county of Alameda and State of California, through the county of Alameda, in the State of California, to Oakland, in said last-mentioned county and State, and from the waterfront to Mission Bay, in the city and county of San Francisco, in said State; and from Lathrop, in the county of San Joaquin, in the State of California, through the counties of San Joaquin, Stanislaus, Merced, Madera, Fresno, and Tulare, in the State of California, to Goshen, in said last-mentioned county and State; and from Roseburg in the county of Placer, in the State of California, through the counties of Placer, Yuba, Sutter, Butte, Tehama, Shasta, and Siskiyou, in said State of California, to the boundary between the States of California and Oregon in the last-mentioned county; and the leasehold of the railroad from a point about five miles west of Ogden to Ogden, in the county of Weber, in the State of Utah.

The railroads situated in the cities of Oakland and Alameda, in the county of Alameda, in the State of California, between the following termini, that is to say:

(1) From a point in the city of Oakland, county of Alameda, in the State of California, on the line hereinbefore described, running from Niles to Oakland, and near the intersection of First and Broadway Streets, curving towards and crossing the estuary of the

Antonio, to the city of Alameda, in said county and State; thence running northeasterly through the city of Alameda via Masticks Station to junctions with said first-mentioned line at Fruitvale and Melrose Stations, and also from Masticks Station aforesaid via Pacific Avenue to the shore of the Bay of San Francisco.

(2) From Brooklyn Station upon said line from Niles to Oakland westerly through said city of Oakland via Seventh Street to the shore of the Bay of San Francisco.

(3) From a point of junction of the Oakland Mole of said line from Niles to Oakland with the wharf known as "Long Wharf," to the western end of said wharf.

The said railroads above described being the railroads which on the 28th day of July, 1899, were the property of the Central Pacific Railroad Company herein referred to, and being 1,367.78 miles in length.

Together with such branches and extensions of said railroad or railroads, or any part thereof, as the company hereby formed may from time to time be authorized by law to construct, operate, acquire, and maintain.

ART. 7. The corporation hereby formed shall be vested with and entitled to exercise and enjoy all the powers, rights, privileges, and franchises which at the time of the acquisition of the said railroads by the corporation hereby formed, or at the time of the sale thereof, belonged to, or were vested in, the Central Pacific Railroad Company, or in the corporation or corporations last owning the said railroads and properties, as well as all the rights, privileges, and franchises of railroad corporations organized under the laws of the State of Utah, including the aforesaid act of the Legislature of the State of Utah, approved January 22, 1897, and said other laws of the State of Utah; and said corporation shall also possess in each State or Territory, as respects its railroads, or any branches or extensions thereof situate therein, all of the powers, rights, privileges, and franchises of railroad corporations organized under the laws of such State or Territory or of the United States.

ART. 8. The corporation hereby formed may construct or acquire by lease, purchase, consolidation, ownership of capital stock, or otherwise, branches, extensions, and connecting lines, within or without this State, and for such purposes or any of them, as well as the purchase or acquisition of the railroads described in article 6 hereof, may from time to time create and issue its stock, common or preferred, or both, and execute bonds and mortgages, for such sum or sums, and payable at such times and places, and drawing such rate of interest as the directors may deem proper; and may use such stock and bonds or any part thereof in payment of property to be purchased by such corporation, or the improvement or extension thereof,

upon such terms as the directors may deem expedient; may guarantee the bonds or obligations of extensions, branches, or connecting auxiliary lines of railroad; and in exercising its corporate powers it may make such leases, purchases, contracts, conveyances, and consolidations, and do such acts as the directors may deem necessary

expedient, not inconsistent with these articles or with the constitution and laws of the State of Utah. The company hereby formed may also consolidate with or merge itself into any other railway company or companies in this or other States or Territories pursuant to law; it may also from time to time amend its articles of association by filing amended articles of association increasing the capital stock, or otherwise, agreeably with law, and without changing the powers of the corporation hereby formed.

ART. 9. The board of directors of said corporation may from time to time adopt and change by-laws not inconsistent with the provisions of these articles or the constitution and laws of the State of Utah. Said by-laws shall provide for annual elections of directors by the stockholders and for the election by the directors of a president and vice president and for the election or appointment of such other officers and vice presidents or other officers as shall be prescribed in such by-laws. Shareholders' or other corporate meetings may be held at such places in the United States as the by-laws may prescribe.

ART. 10. Stockholders shall not be individually liable for the debts of the corporation.

In testimony whereof we have hereunto subscribed our names this twenty-sixth day of July, 1899.

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CHARLES STEELE.
THOMAS MARSHALL.
ROBERT C. CHAMBERS.
JONATHAN C. ROYLE.
DAVID B. HEMPSTEAD.
JOHN E. DOOLY.
GEO. B. BRASTOW.
HARRY T. DUKE.
GEORGE M. DOWNEY.
DOUGLAS O. MORGAN.

STATE OF UTAH,

County of Salt Lake, ss:

On this 26th day of July, 1899, before me, the undersigned notary public, personally appeared Charles Steele, Jonathan C. Roy, Thomas Marshall, David B. Hempstead, Harry T. Duke, John E. Dooly, George B. Brastow, George M. Downey, Douglas O. Morgan and Robert C. Chambers, to me known, and known to me to be identical persons named and described in and who subscribed

foregoing instrument, and they acknowledged to me that they signed the foregoing articles of association for the uses and purposes therein mentioned.

8 In witness whereof I have hereunto set my hand and affixed my official seal the day and year last above written.

LULA GEOGHEGAN,
Notary Public.

[Notarial seal.]

My commission expires Sept. 17, 1901.

(Amendment filed April 2, 1900.)

Special stockholders' meeting.

On this, the second day of April, A. D. 1900, the stockholders of the Central Pacific Railway Company, at twelve o'clock noon, met in special meeting at the office of said company, No. 125 Main Street, over Wells Fargo & Company's Bank, in the city of Salt Lake, State of Utah, in pursuance of a call by the president and secretary of said company after notice duly given.

Thereupon, on motion duly seconded, Jonathan C. Royle was selected as chairman of said meeting and David B. Hempstead as secretary.

Thereupon the secretary of said corporation, in accordance with the laws of said corporation and from the stock book of said corporation, presented to said meeting an alphabetical list of the stockholders of the company, showing the amount of stock held by each, which list showed that there had been issued and then outstanding 792,755 shares of the capital stock of said company, and said list having been duly called, the holders of 792,728 shares of said stock responded to said call either in person or by written proxies filed with the secretary.

Thereupon the chairman caused the call for said meeting to be read, and the same was in words and figures following, to wit:

Special stockholders' meeting.

Notice is hereby given that a special meeting of the stockholders of the Central Pacific Railway Company will be held on Monday, April 2, A. D. 1900, at twelve o'clock noon, at the office of said company, No. 125 Main Street, over Wells Fargo & Company's Bank, Salt Lake City, Utah, for the purpose of amending Article V of the articles of incorporation of said company by increasing the number of directors of said company from seven to nine directors, and by providing by said amendment that "the board of directors to manage and control

the affairs of this corporation shall be nine, a majority of whom
 be sufficient to form a quorum for the transaction of business
 710 and at such meeting will be transacted such other business
 may properly come before the same.

THOMAS MARSHALL,
President Central Pacific Railway Company
 DAVID B. HEMPSTEAD,
Secretary Central Pacific Railway Company

Thereupon proofs of publication of said notice in accordance with
 law having been made the same were ordered to be filed with the
 retary of said company.

Thereupon, on motion duly seconded, it was by said meeting
 unanimously

Resolved, That the articles of incorporation of this company
 and they are hereby, so amended as that Article V thereof shall read
 as follows, to wit:

"ARTICLE V. The number of directors to manage and control the
 affairs of this corporation shall be nine, a majority of whom shall
 sufficient to form a quorum for the transaction of business."

On the presenting of said resolution to the said meeting by the
 chairman the votes of the stockholders present in person and by
 proxies were received, counted, and canvassed by the inspectors
 711 heretofore appointed by the board of directors, and said inspec-
 tors reported and certified the result thereof in writing to
 the meeting, thereby certifying that said resolution was voted in
 favor thereof by the stockholders owning 792,728 shares of said cap-
 ital stock, being the entire stock represented at said meeting, and be-
 ing over two-thirds of all the stock of said corporation issued and
 outstanding.

Thereupon the chairman announced and declared the said amend-
 ment duly adopted.

On motion, the said meeting thereupon adjourned.

JONATHAN C. ROYLL,
Chairman
 DAVID B. HEMPSTEAD,
Secretary

STATE OF UTAH,
County of Salt Lake, ss:

We, the undersigned, Thomas Marshall and David B. Hempstead,
 president and secretary, respectively, of the Central Pacific Railway
 Company, do hereby, in pursuance of the statute in such case made
 and provided, certify that the foregoing is a full, true, and correct

copy of the amendment and proceedings adopted at said stockholders' meeting, and do subscribe our names hereto as such president and secretary, respectively.

THOMAS MARSHALL,
President.

DAVID B. HEMPSTEAD,
Secretary.

[Corporate seal.]
(10c. rev. stamp.)

(Amendment filed February 27, 1912.)

Amendment to articles of incorporation of Central Pacific Railway Company.)

STATE OF UTAH,

County of Salt Lake, ss:

Know all men by these presents, that Central Pacific Railway Company, a corporation organized and existing under the laws of the State of Utah, does hereby amend its articles of incorporation by adding to article 6 thereof, immediately preceding the last paragraph of said article as now existing, the following:

"The corporation hereby formed shall have the power to acquire by purchase or otherwise, own, hold, enjoy, maintain, operate and further extend the railroads, rights, property and franchises, or any part thereof, belonging to the Central California Railway Company, Chico and Northern Railroad Company, Fern and Lassen Railway Company, Goose Lake and Southern Railway Company, Modoc Northern Railway Company, Nevada and California Railway Company, and Sacramento Southern Railroad Company, respectively, corporations organized under the laws of the State of California, and the Oregon Eastern Railway Company, a corporation organized under the laws of the State of Oregon, and to construct and complete any and all of said railroads which shall not be completed at the time of their purchase, and to construct, own, hold, enjoy, maintain, operate and further extend the additional railroads hereinafter described. The termini of the said railroads, respectively, and the States and counties through which the same respectively pass are as follows, to wit:

(1) The railroad now owned by Central California Railway Company extending from Niles, in the county of Alameda, in the State of California, through Newark, in said county, and across San Francisco Bay to Redwood City in the county of San Mateo, in said State of California, a length of about 16.316 miles.

(2) The railroad now owned by Chico and Northern
714 road Company extending from Chico Junction, about one
south of Chico, to Stirling City, all in the County of Butte,
the State of California, a length of about 32 miles.

(3) The railroad projected by Fernley and Lassen Railway Com-
pany, extending from Fernley, in the county of Lyon, in the State
Nevada, through the county of Lyon, in said State of Nevada,
the county of Lassen, in the State of California, via the vicinity
Amadee and Susanville in said last-mentioned county and State,
a point in or near section 19, township 29 north, range 9 east,
Diablo base and meridian, a length of about 135 miles.

(4) The railroads projected by the Goose Lake and Southern Rail-
way Company, extending from a point on the boundary between the
States of California and Oregon, on the east side of Goose Lake,
through the counties of Modoc, Lassen, and Shasta, in the State of
California, via Alturas, in said county of Modoc, to or near Anderson
station in said county of Shasta, a length of about 227 miles; and
extending from Alturas, in the county of Modoc, in the State of Cal-
ifornia, through the counties of Modoc, Lassen, Plumas, and Tehama,
in the State of California, to or near Vina station in said last-
715 mentioned county and State, a length of about 179 miles.

(5) The railroad projected by Modoc Northern Railway
Company extending from Alturas, in the county of Modoc, in the
State of California, through the said county of Modoc, in the State
of California, and the county of Klamath, in the State of Oregon,
or near Klamath Falls, in said last-mentioned county and State,
a length of about 100 miles.

(6) The railroads now owned by Nevada and California Railway
Company extending from Hazen, in the county of Churchill, in the
State of Nevada, through the counties of Churchill, Lyon, and Es-
meralda, in the State of Nevada, and the counties of Mono and Inyo,
in the State of California, to Keeler, in said last-mentioned county
and State, a length of about 288.64 miles; and from said Hazen to
Fallon, all in the county of Churchill, in the State of Nevada, a
length of about 15.92 miles; and from Churchill to Mound House,
in the county of Lyon, in the State of Nevada, a length of about
26.21 miles; and from Filben to Candelaria, all in the county of
Esmeralda, in the State of Nevada, a length of about 5.51 miles; and
from Owenyo, in the county of Inyo, in the State of California,
through the counties of Inyo, San Bernardino, and Kern,
716 the State of California, to Mojave, in said last-mentioned
county and State, a length of about 142.68 miles.

(7) The railroad, partly constructed, now owned by the Sacramento Southern Railroad Company, extending from Sacramento to Walnut Grove, all in the county of Sacramento, in the State of California, a length of about 24 miles.

(8) The railroad now owned by the Oregon Eastern Railway Company extending from Weed, in the county of Siskiyou, in the State of California, through the said county of Siskiyou and through the county of Klamath, in the State of Oregon, to Klamath Falls, in said last-mentioned county and State, a length of about 86.09 miles; and the railroad, projected and partly constructed by said Oregon Eastern Railroad Company, extending from said Klamath Falls through the counties of Klamath and Lane, in the State of Oregon, via Odell, in said county of Klamath, to Natron, in the county of Lane, in said State of Oregon, a length of about 191.8 miles.

(9) The railroad extending from a point of connection with the original line of the Central Pacific Railroad Company just north of the Ogden River, in the county of Weber, in the State of Utah, across Promontory Point and Great Salt Lake, through the counties of Weber and Box Elder, in the State of Utah, to another connection with said original line of said Central Pacific Railroad Company, near and immediately west of Grouse Creek, between Lucin and Gartney Stations, in the county of Box Elder, in said State of Utah, a length of about 102.9 miles.

(10) The railroad extending from Derby to Wadsworth, all in the County of Washoe, in the State of Nevada, a length of about .68 miles.

(11) The railroad extending from Halvern to Alvarado, all in the county of Alameda, in the State of California, a length of about .62 miles.

(12) The railroad extending from Elmhurst to Stonehurst, all in the county of Alameda, in the State of California, a length of about .5 mile."

Dated February 24, 1912.

WM. F. HERRIN,

President of Central Pacific Railway Company.

G. L. KING,

Secretary of Central Pacific Railway Company.

Attest:

[Corporate seal.]

G. L. KING,

Secretary of Central Pacific Railway Company.

(Extract from Volume VIII of Union Pacific merger record, pages 3834 to 3839.)

Central Pacific Railroad Company to Central Pacific Railway Company.

Indenture and agreement. Dated July 29, 1899.

An indenture and agreement, made and entered into the twenty-ninth day of July, one thousand eight hundred and ninety-nine, and between the Central Pacific Railroad Company, a corporation created, organized, and existing under the laws of the State of California, and invested with certain rights and franchises by and under the laws of the United States of America and by and under the laws of the States of Utah and Nevada, party of the first part, and the Central Pacific Railway Company, a corporation created, organized, and existing under and by virtue of the laws of the State of Utah, of the second part:

Whereas, the party of the first part is the owner of the line of railroad, the railways and other properties, rights, privileges and franchises, and the lands and notes and securities and moneys hereinafter in the granting clause hereof described or referred to; and,

Whereas, certain portions of the said lines of railroad and railways and their appurtenances, and said lands, owned by the said party of the first part, are subject to the liens of certain mortgages severally and respectively securing bonds now outstanding (hereinafter called "outstanding old bonds") for the several aggregate principal sums following, to wit:

(a) The Central Pacific Railroad Company of California first mortgage bonds, secured by mortgage dated July 25, 1865, of the several series and for the amounts and now matured or maturing on the dates hereinafter stated, respectively, viz:

Series.	Amount.	Date of maturity.
Series A.....	\$2, 995, 000	Matured.
B.....	\$1, 000	Matured.
	\$999, 000	December 1, 1899.
C.....	\$4, 000	Matured.
	\$996, 000	December 1, 1899.
720 D.....	\$4, 000	Matured.
	\$1, 379, 000	December 1, 1899.
Total.....	\$6, 378, 000	

(b) The Central Pacific Railroad Company of California first mortgage bonds, secured by mortgage dated January 1, 1867, of the several series and for the amounts and now matured or maturing at the dates hereinafter mentioned, respectively, viz:

Series.	Amount.	Date of maturity.
Series E.....	\$5,000	Matured.
	\$3,990,000	June 1, 1900.
F.....	\$9,000	Matured.
	\$3,990,000	June 1, 1901.
G.....	\$13,000	Matured.
	\$3,985,000	June 1, 1901.
H.....	\$6,000	Matured.
	\$3,993,000	June 1, 1901.
I.....	\$13,000	Matured.
	\$3,498,000	June 1, 1901.
Total.....	\$19,502,000	

(c) The Western Pacific Railroad Company first mortgage bonds, secured by mortgage dated July 1, 1869, of the several series and for the amounts and which matured at the date hereinafter mentioned, viz:

Series A for.....	\$1,970,000	Matured July 1, 1899.
B for.....	765,000	Matured July 1, 1899.
Total.....	2,735,000	

(d) The California and Oregon Railroad Company, and Central Pacific Railroad Company, successor, first mortgage bonds, secured by mortgages dated January 1, 1868, and January 1, 1872, respectively, of the several series and for the amounts and maturing at the date hereinafter mentioned, viz:

Series A for.....	\$5,982,000	Maturing January 1, 1918.
B for.....	4,358,000	Maturing January 1, 1918.
Total.....	10,340,000	

(e) The Central Pacific Railroad Company first mortgage bonds (San Joaquin Valley division), secured by mortgage dated October 1, 1870, for the amount of \$6,080,000, maturing October 1, 1900.

(f) The Central Pacific Railroad Company fifty-year five per cent bonds, secured by mortgage dated April 1, 1889, to the amount of \$12,283,000, maturing April 1, 1939, of which bonds the amount of \$2,038,000 are held as security for the land bonds next hereinafter mentioned.

(g) The Central Pacific Railroad Company land bonds, secured by mortgage dated October 1, 1870, to the amount of \$2,134,000 and maturing October 1, 1900.

And whereas, heretofore and under date of February 1, 1899, said party of the first part (in pursuance of a settlement agreement between the United States of America, the said party of the first part, and Messrs. Speyer & Co., dated February 1, 1899, entered into under the provisions of an act of Congress, approved July 7, 1890) executed its twenty promissory notes in favor of the United States of America for \$2,940,635.78 each, maturing on or before the expiration of each successive six months from the date thereof; and,

Whereas the said party of the first part is also indebted to the holders of its bonds to the amount at their face value of \$56,000,000 bearing date October 1, 1886, and payable October 1, 1936, with 5 per cent interest, payable semiannually, commonly known and referred to as "Fifty-year bonds of 1936."

And whereas under and by virtue of authority from the State of California, Utah, and Nevada, the party of the first part has
723 sold to the party of the second part hereunder, subject to the liens now existing thereon, and upon and subject to the terms and conditions hereinafter prescribed, all the lines of railroad, railways, and other properties and rights, privileges and franchises and lands, notes, securities, and moneys hereinafter in the granting clause hereof described and referred to, and any and all other properties, claims, demands, choses in action, rights, privileges, and franchises of the said party of the first part:

Now, therefore, this indenture witnesseth that in consideration of one dollar, which, simultaneously with the execution hereof, has been paid by the party of the second part to the party of the first part, the receipt whereof by said party of the first part is hereby acknowledged, and for and in consideration of the undertaking, covenants, and agreements on behalf of the said party of the second part hereinafter contained, said party of the first part has granted, bargained, sold, conveyed, assigned, transferred, and set over, and hereby grants, bargains, sells, conveys, assigns, transfers, and sets over, unto the party of the second part.

First. The lines of railroad owned by the party of the first part extending from a point about five miles west of Ogden, in the
724 State of Utah, through the States of Utah, Nevada, and California, to and into the city of Sacramento, in the State of California, and from said Sacramento to San Jose, in said last mentioned State, and from Niles to Oakland, and from Lathrop to Goshen, all in the State of California, and from Roseville, in the State of California, to the California and Oregon boundary; and the leasehold of the railroad from a point about five miles west of Ogden to Ogden, in the county of Weber in the State of Utah.

Second. All the railways belonging to the party of the first part in San Francisco, Oakland, and Alameda in the State of California.

the terminals belonging to the party of the first part used in connection therewith, including wharves, piers, docks, embankments, wharves, steamers, and transfer and ferry boats.

Third. All roadbeds, superstructures, rights of way, rails, tracks, bridges, viaducts, terminals, buildings, depots, stations, warehouses, car houses, engine houses, freight houses, coal houses, machine shops and other shops, turntables, water stations, fences, docks, structures, erections, and fixtures, and all other things of whatever kind now owned by the party of the first part, which shall in anywise, or at any time, belong or appertain to, or be provided for use upon, or for the purposes of said lines of railroad, and any and all other property, real or personal, of every kind and description, now owned by the party of the first part for use upon or for the purposes of such lines of railroad or terminals, or any of them.

Fourth. Any and all locomotives, engines, cars, and other rolling stock, equipment, machinery, instruments, tools, implements, materials, furniture, and other chattels of the party of the first part now owned for use upon any of such lines of railroad or terminals or other property.

Fifth. Any and all other railroads, equipment, and terminals owned by the party of the first part.

Sixth. Any and all corporate or other rights, privileges, and franchises which the party of the first part now has, or hereafter shall acquire, possess, or become entitled to, for, or appertaining to, the construction, maintenance, use, or operation of, such lines of railroad or terminals or other property.

Seventh. Any and all the rents, issues, profits, tolls, and other income of such lines of railroad or terminals or other property.

Eighth. All and singular the several sections of land granted by the United States to the Central Pacific Railroad Company of California by an act of Congress approved on the first day of July, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," and an act amendatory thereof, approved on the second day of July, 1864; also all the lands granted to the California and Oregon Railroad Company by an act of Congress approved on the twenty-fifth day of July, 1866, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland, in Oregon"; and also all the estate, right, title, interest claim or demand whatsoever, at law or in equity, of, in, or to the same or part or parcel thereof, which the said party of the first part now owns, or is entitled to, or hereafter may or shall acquire,

have, hold, own, or be or become entitled to by force or virtue of the said acts of Congress, saving and excepting all parts and parcels of said lands which were sold prior to the execution of the mortgage from the Central Pacific Railroad Company to Charles Crocker and Silas W. Sanderson, dated the first day of October, A. D. 1870, securing the land bonds of said last-mentioned company, and all such parts and parcels of said lands as shall have since been released from the said mortgage securing such land bonds in accordance with the provisions thereof.

Ninth. All notes now outstanding given in payment for land covered by such mortgage of the Central Pacific Railroad Company dated October 1, 1870, securing said land bonds.

Tenth. All securities and moneys which are held in any sinking fund created or existing by or under any mortgage existing on the 20th day of February, 1899, whether of the party of the first part or any divisional company by the consolidation whereof it was formed.

Eleventh. All other properties, claims, demands, moneys, choses in action, leaseholds, rights, privileges, and franchises owned by or belonging to the party of the first part, or to which it is in any way entitled.

To have and to hold the premises, railroads, railways, properties real or personal, claims, demands, choses in action, leaseholds, rights, privileges, franchises, estates, and appurtenances, lands, and notes and securities and moneys hereby granted, bargained, sold, conveyed, assigned, transferred or set over, or intended so to be, unto the party of the second part and to its successors and assigns forever, but subject to the liens thereon hereinbefore mentioned and referred to.

And in further consideration hereof, and in order to provide for the readjustment of the present funded indebtedness of the party of the first part (subject to which the properties of said party of the first part are hereby conveyed), and for the purpose of securing payment of the amounts becoming due on the notes given by the party of the first part to the United States under said settlement agreement, dated February 1, 1899, as in said settlement agreement prescribed, the party of the second part has assumed and hereby assumes the payment of all the indebtedness and guaranties of the said party of the first part, and has undertaken, covenanted, agreed, and hereby undertakes, covenants, and agrees to and with the party of the first part that it will issue stocks and securities and execute mortgages as prescribed in the Central Pacific readjustment plan and agreement dated February 8, 1899, issued by Speyer & Co.

Speyer Brothers, Laz Speyer Ellissen, Teixeira de Mota Brothers, and the Deutsche Bank of Berlin, as readjustment managers, or as the same may be modified under the terms

hereof and with the assent of the party of the second part, and in certain agreement bearing date the 20th day of February, one thousand eight hundred and ninety-nine, by and between F. G. Banbury, Esq., M. P., John B. Akroyd, Esq., Lord Alwyne Compton, M. P., Daniel Marks, Esq., and Joseph Price, Esq., as the London committee of Central Pacific shareholders, Messrs. Speyer & Company of New York, Messrs. Speyer Brothers of London, Mr. Laz Speyer Ellissen of Frankfort-on-the-Main, Messrs. Teixeira de Mattos Brothers of Amsterdam, and the Deutsche Bank of Berlin, as readjustment managers as therein stated, and the Southern Pacific Company, and in a certain other agreement bearing date the 1st day of March, one thousand eight hundred and ninety-nine, by and between August Belmont, Esq., Hon. John G. Carlisle, and George Coppel, Esq., as the American committee of Central Pacific shareholders, the said readjustment managers and the Southern Pacific Company, and under arrangements made or to be made with said readjustment managers will carry out such readjustment and said agreements.

In witness whereof, the parties hereto have caused these presents to be signed on their behalf respectively by their respective presidents, and their respective corporate seals to hereunto affixed and attested by their respective secretaries the day and year first above written.

CENTRAL PACIFIC RAILROAD COMPANY,
By ISAAC L. REQUA, *President*.

[Seal of Central Pacific Railroad Company.]

Attest:

W. M. THOMPSON, *Secretary*.
CENTRAL PACIFIC RAILWAY COMPANY,
By THOMAS MARSHALL, *President*.

[Seal of Central Pacific Railway Company.]

Attest:

DAVID B. HEMPSTEAD, *Secretary*.

DEFENDANTS' EXHIBIT No. 48, APRIL 16, 1915.

[Extract from Volume VIII of Union Pacific merger record, pages 3852 to 3854.)

Southern Pacific Company to Central Trust Company of New York, Trustee.

Indenture Subordinating Lease to Lien of Central Pacific Railway Company's First Refunding Mortgage. Dated August 1st, 1899.

An indenture, made the 1st day of August, 1899, by and between Southern Pacific Company, a corporation of the State of Ken-

tucky, party of the first part, and the Central Trust Company of New York, a corporation of the State of New York, party of the second part.

Whereas, the Central Pacific Railway Company (a corporation of the State of Utah) has, under even date herewith, executed an indenture to the party of the second part to secure the issue of first refunding mortgage gold bonds of the said Central Pacific Railway Company, issued and to be issued for an aggregate principal sum not exceeding one hundred million dollars (\$100,000,000) at any one time outstanding, as by said mortgage reference thereto being had, will more fully appear; and

732 Whereas the properties covered by said mortgage have heretofore been and still are in possession of the party of the first part as lessor thereof; and

Whereas the properties covered by said mortgage have heretofore been and still are in possession of the party of the first part as lessor thereof; and

Whereas, in consideration of the benefits and advantages to be derived by said party of the first part from the carrying out of the agreement between the United States of America, the Central Pacific Railroad Company, and Messrs Speyer & Co., dated February 1, 1899, in reference to the settlement of the indebtedness to the United States growing out of the issue of bonds in aid of the construction of the Central Pacific and Western Pacific, bond-aided railroads, the party of the first part hereto has agreed to subordinate its rights as lessor of said railroads to the lien of the said mortgage securing said first refunding mortgage gold bonds;

Now, therefore, this indenture witnesseth, that in consideration of the premises and of the sum of one dollar by the party of the second part to the party of the first part in hand paid, the receipt

whereof is hereby acknowledged, the said party of the first

733 part has undertaken, covenanted, and agreed and bound itself to

hereby undertake, covenant, and agree that the said mortgage

from the Central Pacific Railway Company to the party of the

second part, dated August 1, 1899, securing the said first refunding

mortgage gold bonds of said Central Pacific Railway Company

shall be, and shall be deemed and held to be, prior in lien to all

lease of the railroads formerly of the Central Pacific Railroad Com-

pany (but now transferred to the said Central Pacific Railway

Company), or their appurtenances or any portion thereof, and to

the lease of said railroads and their appurtenances to the party of

the first part be, and the same is hereby, subordinated in lien to the

mortgage of the said Central Pacific Railway Company to the party

of the second part securing such first refunding mortgage gold bonds

In witness whereof the said party of the first part hereto has

caused its corporate seal to be hereunto affixed and attested by

secretary or assistant secretary, and has caused these presents to be signed on its behalf by its president or one of its vice presidents, the day and year first above written.

SOUTHERN PACIFIC COMPANY,
By C. P. HUNTINGTON, *President*.

34 [Seal of Southern Pacific Company.]

Attest:

I. E. GATES,
Asst. Secretary.

STATE OF NEW YORK,

City and County of New York, ss:

Be it remembered that on this 20th day of September, in the year one thousand eight hundred and ninety-nine, before me, the undersigned, George H. Corey, a commissioner, resident in the city of New York, duly commissioned and qualified by the executive authority and under the laws of the State of Utah, to take acknowledgment of deeds, &c., to be used or recorded therein, personally appeared Collis P. Huntington and Isaac E. Gates, who, being by me respectively duly sworn, each for himself, says that he, the said Collis P. Huntington, is the president of the Southern Pacific Company, and the said Isaac E. Gates is the assistant secretary of said company, one of the corporations named in the foregoing instrument, and that said instrument was signed in behalf of said corporation by said president and assistant secretary, respectively, under and in pursuance of a resolution of its board of directors; and the said Huntington and Gates, respectively, acknowledged to me that said corporation executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year last aforesaid.

GEO. H. COREY,
Commissioner for the State of Utah.
Office, 56 Wall Street, N. Y.

[Commissioner's seal.]

My commission expires January 5, 1902.

STATE OF NEW YORK,

City and County of New York, ss:

Be it remembered that on this 20th day of September, in the year one thousand eight hundred and ninety-nine, before me, the undersigned, George H. Corey, a commissioner, resident in the city of New York, duly commissioned and qualified by the executive authority and under the laws of the State of Nevada, to take acknowledgment of deeds, &c., to be used or recorded therein, personally appeared

the within-named Collis P. Huntington, president of the Southern Pacific Company, and Isaac E. Gates, assistant secretary of the

Southern Pacific Company, personally known to me to be
736 said officers of the said corporation, respectively, and
individuals described in and who executed the within instrument as such officers of said company, and they each, severally and personally then and there acknowledged to me that they executed the said instrument as the free act and deed of the said Southern Pacific Company, freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year last aforesaid.

GEO. H. COREY,
Commissioner for the State of Nevada.
Office, 56 Wall Street, N. Y.

[Commissioner's seal.]

My commission expires January 23, 1900.

STATE OF NEW YORK,

City and County of New York, ss:

Be it remembered that on this 20th day of September, in the year one thousand eight hundred and ninety-nine, before me, the undersigned, George H. Corey, a commissioner, resident in the city

New York, duly commissioned and qualified by the executive
737 authority and under the laws of the State of California
take acknowledgment of deeds, and so forth, to be used and recorded therein, personally appeared Collis P. Huntington, known to me to be the president, and Isaac E. Gates, known to me to be the assistant secretary, of the Southern Pacific Company, the corporation described in and which executed the within and annexed instrument and acknowledged to me that said corporation executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year last aforesaid.

GEO. H. COREY,
Commissioner for the State of California.
Office, 56 Wall Street, N. Y.

[Commissioner's seal.]

My commission expires October 28, 1899.

DEFENDANTS' EXHIBIT No. 49, APRIL 16, 1915.

(Extract from Volume VIII of Union Pacific Merger record, pages 3855 to 3857.)

Southern Pacific Company to United States Trust Company, trustee.

Indenture subordinating lease to lien of Central Pacific Railway Company's three and one-half per cent mortgage, dated August 1st, 1899.

An indenture made the 1st day of August, 1899, by and between the Southern Pacific Company, a corporation of the State of Kentucky, party of the first part, and the United States Trust Company of New York, a corporation of the State of New York, party of the second part.

Whereas the Central Pacific Railway Company (a corporation of the State of Utah) has, under even date herewith, executed an indenture to the party of the second part to secure the issue of three and one-half per cent mortgage gold bonds of the said Central Pacific Railway Company, issued and to be issued for an aggregate principal sum not exceeding twenty-five million dollars (\$25,-
738 000,000) at any one time outstanding, as by said mortgage, reference thereto being had, will more fully appear; and

Whereas the railroads and their appurtenances covered by said mortgage have heretofore been and still are in possession of the party of the first part as lessee thereof; and

Whereas in consideration of the benefits and advantages to be derived therefrom the party of the first part hereto has agreed to subordinate its rights as lessee of said railroads to the lien of the said mortgage securing such three and one-half per cent mortgage gold bonds:

Now, therefore this indenture witnesseth that in consideration of the premises and of the sum of one dollar by the party of the second part to the party of the first part in hand paid, the receipt whereof is hereby acknowledged, the said party of the first part has undertaken, covenanted, and agreed, and does hereby undertake, covenant, and agree, that the said mortgage from the Central Pacific Railway Company to the party of the second part, dated August 1, 1899, securing the said three and one-half per cent mortgage gold bonds of said Central Pacific Railway Company shall be, and shall be deemed and be held to be, prior in lien to any lease of the railroads formerly of the Central Pacific Railroad Company (but

740 now transferred to the said Central Pacific Railway Company), or their appurtenances or any portion thereof, and that the lease of said railroads and their appurtenances to the party of the first part be, and the same is hereby, subordinated lien to the said mortgage of the said Central Pacific Railway Company to the party of the second part securing such three and one half per cent mortgage gold bonds.

In witness whereof the said party of the first part hereto has caused its corporate seal to be hereunto affixed and attested by its secretary or assistant secretary and has caused these presents to be signed on its behalf by its president or one of its vice presidents the day and year first above written.

SOUTHERN PACIFIC COMPANY,
By C. P. HUNTINGTON, *President*.

[Seal of Southern Pacific Company.]

Attest:

I. E. GATES, *Asst. Secretary*.

STATE OF NEW YORK,

City and County of New York, ss:

Be it remembered that on this 20th day of September, in the year one thousand eight hundred and ninety-nine, before me, the undersigned, George H. Corey, a commissioner, resident in the city of New York, duly commissioned and qualified by the executive authority and under the laws of the State of Utah to take acknowledgement of deeds, &c., to be used or recorded therein, personally appeared Collis P. Huntington and Isaac E. Gates, who being by me respectively duly sworn, each for himself, says that he the said Collis P. Huntington, is the president of the Southern Pacific Company and the said Isaac E. Gates is the assistant secretary of said company, one of the corporations named in the foregoing instrument, and that said instrument was signed in behalf of said corporation by said president and assistant secretary, respectively, under and in pursuance of a resolution of its board of directors, and the said Huntington and Gates respectively acknowledged to me that said corporation executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year last aforesaid.

GEO. H. COREY,
Commissioner for the State of Utah,
Office, 56 Wall Street, N. Y.

742 [Commissioner's seal.]

My commission expires January 5, 1902.

STATE OF NEW YORK,

City and County of New York, ss:

Be it remembered that on this 20th day of September, in the year one thousand eight hundred and ninety-nine, before me, the undersigned, George H. Corey, a commissioner, resident in the city of New York, duly commissioned and qualified by the executive authority, and under the laws of the State of Nevada, to take acknowledgment of deeds, &c., to be used or recorded therein, personally appeared the within-named Collis P. Huntington, president of the Southern Pacific Company, and Isaac E. Gates, assistant secretary of the Southern Pacific Company, personally known to be to be the said officers of the said corporation, respectively, and the individuals described in and who executed the within instrument, as such officers of said company, and they each severally and personally then and there acknowledged to me that they executed the said instrument as the free act and deed of the said Southern Pacific Company, freely and voluntarily, and for the uses and purposes therein mentioned.

743 In witness whereof I have hereunto set my hand and affixed my official seal the day and year last aforesaid.

GEO. H. COREY,

*Commissioner for the State of Nevada,**Office, 56 Wall Street, N. Y.*

[Commissioner's seal.]

My commission expires January 23, 1900.

STATE OF NEW YORK,

City and County of New York, ss:

Be it remembered that on this 20th day of September, in the year one thousand eight hundred and ninety-nine, before me, the undersigned, George H. Corey, a commissioner, resident in the city of New York, duly commissioned and qualified by the executive authority and under the laws of the State of California to take acknowledgment of deeds, &c., to be used or recorded therein, personally appeared Collis P. Huntington, known to me to be the president, and Isaac E. Gates, known to me to be the assistant secretary, of the Southern Pacific Company, the corporation described in and which executed the within and annexed instrument, and acknowledged to me that said corporation executed the same.

744 In witness whereof I have hereunto set my hand and affixed my official seal the day and year last aforesaid.

GEO. H. COREY,

*Commissioner for the State of California,**Office, 56 Wall Street, N. Y.*

[Commissioner's seal.]

My commission expires October 28, 1899.